

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From January 1, 1955
Through March 31, 1955
VOLUME 78

JOHN PATTERSON, Attorney General

WETUMPKA PRINTING CO.
Printers and Publishers
Wetumpka, Ala.
1955

QUARTERLY REPORT
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ALABAMA
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**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1955 through March 31, 1955, is published in accordance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General.

Attorney General:
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OPINIONS



January 5, 1955

Hon. J. P. Shaffer, Clerk,
Montgomery County Board of Revenue,
Montgomery 4, Alabama.

Judges of Probate—Officers and Offices—Attorneys.

One appointed as a special judge of probate under the provisions of Title 13, Section 310, Code of Alabama 1940, must be an attorney at law, practicing in the county where appointed.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of December 31, 1954, is as follows:

"Section 310, Title 13, of the Code of Alabama, provides, among other things, that upon proper certification of incompetency of the Probate Judge, the Register of the Circuit Court 'must appoint a disinterested person practicing in the county, learned in the law, to act as Special Judge of Probate . . .'

"Please refer to Sec. 154 of the Constitution of Alabama of 1901.

"Does this mean that the person so appointed must be a practicing attorney in the county?"

The judges of probate in this State are not required to be learned in the law. While Section 154, Constitution of Alabama 1901, requires all chancellors and judges to be learned in the law, it expressly excepts judges of probate. **Kentz v. City of Mobile**, 120 Ala. 623, 24 So. 952; **Finklea v. Farish**, 160 Ala. 230, 49 So. 366; **State, ex rel. Vandiver v. Burke**, Judge, 175 Ala. 561, 57 So. 870.

There is no similar constitutional provision, however, allowing one not learned in the law to serve as special probate judge while the probate judge is absent due to sickness or other legal cause; neither is there any constitutional provision prescribing the qualifications of one who so serves as such special probate judge. In the absence thereof, the Legislature is all-powerful in dealing with the qualifications of the one who serves as special probate judge. **State v. Stone**, 224 Ala. 234, 139 So. 328; **Montgomery v. State**, 231 Ala. 1, 163 So. 365, 101 A. L. R. 1394.

By Section 310, Title 13, Code of Alabama 1940, the Legislature has prescribed the qualifications of the person who serves as special probate judge. Said section, insofar as here pertinent, provides:

" . . . and such register or judge must, upon such certificate, appoint a disinterested person practicing in the county, learned in the law to act as special judge of probate or special county judge;"

In my opinion, this means that the special probate judge must be an attorney at law, practicing in the county. *Lawler v. Lyness*, 112 Ala. 386, 20 So. 574; *Roberts v. State*, 126 Ala. 74, 28 So. 741; *State v. Schmahl*, 125 Minn. 533, 147 N. W. 425; *Jamieson v. Wiggin*, 12 S. D. 16, 80 N. W. 137, 46 L. R. A. 317, 76 Am. St. Rep. 585,

Your question, therefore, is answered in the affirmative.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

January 6, 1955

Dr. W. J. Terry,
State Superintendent of Education,
State of Alabama,
Montgomery, Alabama.

Schools—Funds—Appropriations—State Board of Education—
State Department of Education.

1. Funds on deposit in the State Textbook Purchasing Fund, consisting of revenues from allowances, sale of bulletins, and rebates made under contracts for the sale and distribution of school textbooks, should be placed in the Free Textbooks Fund and credited as receipts for the fiscal year in which they are received.

2. Funds deposited in the Free Textbooks Fund, consisting of revenues from allowances, sale of bulletins, and rebates made under contracts for the sale and distribution of school textbooks, amount, in effect, to an overall reduction in the purchase price of the free textbooks and the costs of administering the program, and when so considered may be expended by the State Department of Education during the fiscal year received without an additional appropriation for that purpose.

3. Unencumbered balances in the Free Textbooks Fund for the fiscal years 1951-52, 1952-53, and 1953-54 revert to the Alabama

Special Educational Trust Fund under the provisions of Act No. 484, General and Local Acts 1951, page 861, Act. No. 508, General and Local Acts 1953, page 637, and Title 55, Section 104, Code of Alabama 1940.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of January 20, 1954, is as follows:

"On January 15, 1953, your office rendered an opinion in response to a request from me concerning the Textbook Purchasing Board Fund maintained in the State Treasury by the State Department of Education. The questions asked in my request were as follows:

"1. Is the Textbook Purchasing Board Fund a legal fund?

"2. What revenue is the Textbook Purchasing Board Fund entitled to receive?

"3. How may this be expended?"

"The answers to these questions are found in your opinion in the following quotations:

"I find no provision of law establishing or making provision for a fund known or designated as the Textbook Purchasing Board Fund.

"I do find that prior to the effective date of Act No. 412, supra (October 1, 1945), there did exist a Textbook Purchasing Board with certain designated duties . . . In the performance of such duties certain funds did accrue to the Textbook Purchasing Board in the form of cash deposit forfeitures, rebates, etc., by the persons, firms or corporations furnishing such textbooks to the State. However, I am of the opinion that all of such revenue so accruing should have been deposited to the credit of the Free Textbook Fund consisting of the legislative appropriation for such purpose, rather than to the credit of the Textbook Purchasing Board Fund. (Emphasis supplied.)

" . . . all revenue accruing or expenditures made in connection with the administering of the statutes pertaining to furnishing and distribution of free textbooks should be made from the Free Textbook Fund."

"The language of the opinion is quite clear. There is no legal provision for the Textbook Purchasing Board Fund and all revenues, in addition

to the legislative appropriation, belong to the Free Textbook Fund, which is the legislative appropriation for free textbooks, an appropriation account of the Alabama Special Education Trust Fund. All expenditures made in connection with the administration of the free textbooks program are payable from this Fund.

"Since the receipt of the opinion in question, all operating costs of distributing free textbooks have been paid from that account maintained by the State comptroller for receiving quarterly allotments of the legislative appropriation for free textbooks. There have been no expenditures for this purpose from any other fund except that certain encumbrances of the 1951-52 fiscal year were paid from the Textbook Purchasing Fund maintained by the State Comptroller which is the new name given to the Textbook Purchasing Board Fund.

"During the 1952-53 fiscal year revenues, exclusive of the legislative appropriation for free textbooks, totaling \$53,095.90 were received and deposited in the Textbook Purchasing Fund the new name given by the State Comptroller to the old Textbook Purchasing Board Fund, which is maintained in addition to the appropriation account. This revenue consisted of rebates, or discounts, allowed by the V. J. Elmore and Company, State textbook depository, on sales of textbooks in the State during the year and the sale of certain bulletins printed in a prior fiscal year at the expense of the Textbook Purchasing Board Fund. The cash balance of the Textbook Purchasing Fund on September 30, 1953 was \$53,118.78 which included the revenues and \$23.19 brought over from the 1951-52 year. During the current fiscal year of 1953-54 it is anticipated that the revenues will be approximately the same as during the 1952-53 fiscal year and that there will be a cash balance of approximately \$106,215.00 in this Fund on September 30, 1954 in addition to the appropriation for free textbooks.

"The State Comptroller declines to credit this additional revenue to the account used to account for the legislative appropriation because to do so, the amount available for expenditures would be greater than the amount appropriated by the legislature.

"Your attention is called to the provisions of Title 55, Section 103, Code of Alabama 1940, with respect to departmental receipts. This section requires the deposit of all receipts collected by any department to the credit of the general fund or to the credit of a special fund if the latter is required by law. Your attention is called, also, to Title 55, Section 104, Code of Alabama 1940, which deals with lapsing appropriations.

"Considering the facts and conditions outlined above, I wish to request your official opinion on the following questions:

"1. May the State Department of Education legally spend the cash balance of \$53,114.28 in the State Textbook Purchasing Fund (formerly the State Textbook Purchasing Board Fund) on September 30, 1953, during the

current 1953-54 fiscal year for the purchase of free textbooks for use in the schools of the State and for paying the cost of administering the free textbook program?

"2. If your answer to question No. 1 is in the negative what disposition should be made of this balance?

"3. May the State Department of Education legally spend any revenue from rebates, allowances, and the sale of bulletins, published in a prior fiscal year at the expense of the State Textbook Purchasing Board Fund, received or earned during the current 1953-54 fiscal year for the purchase of free textbooks for use in the schools of the State and for paying the cost of administering the free textbook program.

"4. If your answer to question No. 3 is in the negative, what disposition should be made of the current revenues in question?

"5. If your answer to question No. 3 is in the affirmative, may the revenues in question be deposited in a fund designated as the Textbook Purchasing Fund, a fund separate and apart from the appropriation of the Alabama Special Education Trust Fund, and be spent from that fund?

"6. If, at the close of the current 1953-54 fiscal year on September 30, 1954, there is an unused balance of the revenues collected during the year, what disposition should be made of such balances?"

It is deemed expedient to discuss generally your questions rather than to answer each separately. In this connection, it is well to state what, in my opinion, is pertinent history with respect to the State Textbook Purchasing Fund. From information furnished by representatives of your department and by the State Comptroller, I am advised that this fund, which until on or about January 15, 1953, was known as the "State Textbook Purchasing Board Fund," has been in existence at least since 1932. See Quarterly Report of Attorney General Vol. 70, page 14; Vol. 47, page 39; Vol. 20, page 40; Biennial Report of Attorney General, 1932-34, page 27.

I am advised that fluctuating amounts of money have been deposited to the credit of this fund, and that the source of this money has been revenues from allowances, sale of bulletins, and rebates made by the State Textbook Depository under contracts for the sale and distribution of textbooks used in the public elementary and high schools of the State. I am further advised that, under the terms of that certain contract now in force with a private corporation, viz., the V. J. Elmore Company, which company is currently the State Textbook Depository and handles the sale and distribution of school textbooks in behalf of the State Board of Education, a rebate of three per cent is made by the said company to the State Board of Education on all textbooks sold.

Free textbooks are furnished for the first six grades of school only, and the amount currently expended therefor, including administrative costs, is \$450,000.00 per annum, which was the amount appropriated for that purpose for the current fiscal year. See Section 5 of Act No. 508, General and Local Acts 1953, page 637; see also Section 13 of Act No. 412, General Acts 1945, page 647 (Title 52, Section 433 (13), 1953 Cumulative Pocket Part, Code of Alabama 1940).

In addition to the \$450,000.00 spent annually for free textbooks for elementary schools, a much larger amount is spent by high school students for textbooks. The said three per cent rebate is made, not only on the amount expended for free textbooks, but is made also on the sales to high school students. During years past the said three per cent rebate has been deposited in the said special fund and has, from time to time, been spent for the purchase of free textbooks, including administrative costs, as the need has arisen. In addition to the rebates aforesaid, there have been deposited in this fund certain revenues accruing from the allowances and the sale of bulletins. The great percentage of the deposits, however, represent the said rebates.

It appears from the records of the State Comptroller that, since the fiscal year 1943-44, a total of \$435,397.62 has been deposited to the credit of the said Textbook Purchasing Fund, and a total of \$328,444.57 has been disbursed from that fund. The deposits have consisted of the said revenues from allowances, sale of bulletins, and rebates made under contracts for the sale and distribution of school textbooks. The disbursements have been made for the purchase of free school textbooks, and for the cost of administering the free textbook program. That said revenues should be received and used for the purpose of free textbooks and for the cost of administering the free textbook program has been the interpretation given by the highest officials charged with the duty of administering the funds. Such interpretation should be given favorable consideration, especially where such interpretation has stood unchallenged for considerable time. *Jones v. Johnson*, 240 Ala. 357, 199 So. 539.

This office has held in Quarterly Report of Attorney General, Vol. 70, page 14, that there has never existed by reason of law any fund required to be known and designated as the Textbook Purchasing Board Fund. It was pointed out that Act No. 412, supra, on at least two occasions, makes specific reference to the Free Textbooks Fund, providing that in the event of forfeited cash deposits by the persons, firms, or corporations furnishing such textbooks such deposits shall accrue to the Free Textbooks Fund. It is to be noted that the forfeited cash deposits go to the Free Textbooks Fund, notwithstanding the fact that the bid may be for the purpose of supplying books other than free textbooks. It was further pointed out that all legislative appropriations for such purpose are also designated as being for the purchase of free textbooks, and that it is reasonable to assume that such appropriations are credited to a fund or account known as the Free Textbooks Fund, and all revenue accruing or expenditures made in con-

nection with the statutes pertaining to the furnishing and distribution of free textbooks should be made from the Free Textbooks Fund.

It is my opinion, therefore, from what has been said above, that the revenues in question should be placed in the Free Textbooks Fund. When overall consideration is given to the origin of the revenues and the purposes for which they are received, it is my opinion that the placing of the funds in the Free Textbooks Fund amounts, in effect, to an overall reduction in the purchase price of the free textbooks and the cost of administering the program. To illustrate, if the annual appropriation of \$450,000.00 for free textbooks and administering the program has been expended for the fiscal year ending September 30, 1954, and during that year revenues by way of rebates, etc., are received which go into the Free Textbooks Fund in the amount of \$50,000.00, this, in effect, would result in a \$50,000.00 reduction in the costs of the books and administration costs, so that the \$50,000.00 would still be available for expenditure during that fiscal year for the program under the authority of the original \$450,000.00 appropriation. It would not be the receipt of \$50,000.00 in addition to the \$450,000.00 for which another appropriation would be necessary in order to authorize its expenditure. So considered, any unencumbered balance in the Free Textbooks Fund for the fiscal year ending September 30, 1954, would revert to the Alabama Special Educational Trust Fund. Act No. 503, supra; Title 55, Section 104, Code of Alabama 1940. The same would be true for the fiscal years ending September 30, 1952, and September 30, 1953. Act No. 484, General and Local Acts 1951, page 861; Title 55, Section 104, supra.

It results, therefore, that the \$23.19 brought over from the 1951-52 fiscal year should be placed in the Free Textbooks Fund as a receipt for that year. The \$53,095.90 should be placed in the Free Textbooks Fund as a receipt for the 1952-53 fiscal year, and the receipts for 1953-54 likewise placed in said fund for the 1953-54 fiscal year. These amounts should then be placed in the Alabama Special Educational Trust Fund as unencumbered balances which reverted to this fund in accordance with the provisions of Section 104, supra, unless said balances have been encumbered as provided by law so that they would not revert to said fund.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

January 7, 1955

Dr. D. G. Gill,
State Health Officer,
Department of Public Health,
Montgomery 4, Alabama.

Health and Health Department—Counties—Municipalities—Hospitals—Funds.

The State Board of Health, under the provisions of Amendment LXXIV, Constitution of Alabama 1901, and Act No. 211, General Acts 1945, page 330, may grant moneys to the Huntsville Hospital, Inc., a nonprofit corporation, for the purpose of aiding in the construction of an addition to the hospital, provided the local governments, in the area where the hospital addition is to be built legally contribute at least as much money for the construction as does the State.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of September 16, 1954, is as follows:

"Re: Ala-106.

"The Huntsville Hospital, Incorporated, a nonprofit corporation, which owns and operates the Huntsville Hospital, Huntsville, Alabama, has applied to the State Board of Health for a State and Federal grant to aid in the construction of an addition to the Huntsville Hospital. There is no question relative to the eligibility of the Huntsville Hospital for a grant of Federal funds inasmuch as it has qualified under the requirements of the Public Law 725 (79 Congress), as amended. The question involves the eligibility of the Huntsville Hospital, Inc., to receive a grant of State funds under the provisions of Amendment LXXIV to the Constitution of 1901 of the State of Alabama, the second paragraph of which reads as follows:

"The proceeds from the sale of such bonds are hereby appropriated and shall be used solely for the construction of hospitals and hospital facilities pursuant to Act No. 211, S. 107, approved July 7, 1945 (General Acts of Alabama, 1945, page 330), or any act supplemental thereto or amendatory thereof; provided that the funds appropriated hereby shall be used only for the construction of hospitals, clinics, or health centers under contracts which have been or are let on or after May 1, 1949, and that the funds shall be used to match Federal funds available

for hospital, clinic or health center purposes, and that the local governments in the area where each hospital, clinic, or health center is to be built shall contribute at least as much money for the construction as does the State; and provided further that the State shall not contribute more than three hundred fifty thousand dollars (350,000) to the construction of any one hospital, clinic or health center.'

"In considering this question the following information is set forth which has a bearing thereon.

"1. The Huntsville Hospital, Inc., is, according to the 'Constitution of the Huntsville Hospital, Huntsville, Alabama, as amended January 20, 1954' a non-profit corporation to 'establish and maintain a hospital for the care of all persons who are suffering from any illness or disability which requires the patient to receive hospital care.'

"2. On June 25, 1937, the Deputy Commissioner of Internal Revenue ruled that the Huntsville Hospital, Inc. was a non-profit corporation and therefore exempt from payment 'of taxes imposed by the Social Security Act, approved August 14, 1935 . . .' and '. . . it is held that you are entitled to exemption under the provisions of Section 101 (6) of the Revenue Act of 1936, and the corresponding provisions of prior revenue acts.'

"3. On the basis of 1 and 2 above the Huntsville Hospital, Inc., is eligible to receive a grant of Federal funds under the provisions of Public Law 725 (79 Congress) as amended, and was granted Federal funds by the State Board of Health on July 28, 1954 for the purposes of constructing an addition to the Huntsville Hospital.

"4. On June 21, 1952, the Huntsville Hospital, Inc., as a part of its application for Federal funds also applied for a grant of State funds under the Amendment quoted above. On July 28, 1954 the State Board of Health approved a grant of State funds in the amount of \$60,000 subject to the legality of the grant.

"5. On August 2, 1954, the Board of Commissioners of Madison County, Alabama, passed the following resolution:

"'NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners that the sum of \$200,000 is hereby appropriated from the County Treasury to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in the Huntsville Hospital, Inc., a hospital maintained for the care of the sick and wounded, by virtue of authority contained in Title 22, Section 190, Code of Alabama 1940.'

"6. On August 3rd the City Council of the City of Huntsville passed Ordinance No. 54-99 which reads as follows:

"'BE IT ORDAINED BY the City Council of the City of Huntsville, as follows:

"'Section 1: That there is hereby appropriated from and out of the general fund of the City of Huntsville, the sum of \$75,000 to be paid to The Huntsville Hospital, Inc., a non-profit institution, situated in the City of Huntsville, Alabama, to be used by it in aiding, maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained for the care of the sick and wounded.'

"7. The proposed addition to the Huntsville Hospital is estimated to cost a total of \$871,000 to be financed as follows:

"Federal funds.....	\$500,000
Madison County.....	200,000
City of Huntsville.....	75,000
Huntsville Hospital, Inc.....	36,000
State of Alabama.....	60,000
Total	\$871,000

"With the above information it is respectfully requested that you render an opinion on the following question: 'Can the State Board of Health, under the provisions of Amendment LXXIV grant monies from the bond issue authorized by said Amendment to the Huntsville Hospital, Inc., a non-profit corporation, for the purpose of aiding in the construction of an addition to the Huntsville Hospital.'"

Insofar as here pertinent, Act No. 211, General Acts 1945, page 330, provides as follows:

"Section 2. The State Board of Health is hereby authorized and empowered to acquire, construct, equip, maintain, and operate public hospitals, health centers, and related facilities for the treatment of any type of disease. The State Board of Health is authorized and empowered to cooperate and to make contract with the United States Government, any local political subdivision or their agencies, any non-profit association or public improvement society in the acquisition, building, equipping, maintaining, and operation of any public hospitals, health centers, and related facilities for the treatment of any type of disease."

In Quarterly Report of Attorney General, Vol. 51, page 195, this office, in construing Act No. 211, supra, held:

"From a comparison of Public Act No. 725, commonly referred to as the Hill-Burton Act and Act No. 211, General Acts 1945, page 330, it can readily be seen that the Legislature, by the adoption of Act No. 211, intended to conform to the requirements of Public Law No. 725 to the end that the State of Alabama by and through the State Board of Health could participate in any benefits made available under Public Law No. 725 by the Federal Government. In truth and in fact, Act No. 211, supra, would never have been adopted by the State Legislature if Public Law No. 725 had not been previously adopted by the Congress. The whole purpose, intent and field of operation of Act No. 211 is to allow the State of Alabama to participate in any hospital plan set up under Public Law No. 725.

" . . . As pointed out hereinabove, the establishment of hospitals, contemplated by this Act were those hospitals in which the Federal Government will contribute funds under the provisions of Public Law No. 725."

Under Public Law No. 725, the Hill-Burton Act, the term "construction" includes expansion, remodeling, and alteration of existing buildings and "nonprofit hospitals" includes any hospital which is owned and operated by one or more non-profit corporations or associations, no part of the net earnings of which enures to the benefit of any shareholder or individual.

When Act No. 211, supra, is considered along with the Hill-Burton Act, supra, it is my opinion that the addition to the Huntsville Hospital comes within the purview of Act No. 211, supra, and would be a hospital facility constructed pursuant to the Act, within the meaning of Amendment LXXIV, Constitution of Alabama 1901. This view is supported by the fact that the Huntsville Hospital has already secured a federal grant in the amount of \$500,000.00 for constructing the addition to the existing hospital facilities.

Amendment LXXIV, supra, provides in part as follows:

"The proceeds from the sale of such bonds are hereby appropriated and shall be used solely for the construction of hospitals and hospital facilities pursuant to Act No. 211, S. 107, approved July 7, 1945 (General Acts of Alabama, 1945, page 330), or any act supplemental thereto or amendatory thereof; provided, that the funds appropriated hereby shall be used only for the construction of hospitals, clinics, or health centers under contracts which have been or are let on or after May 1, 1949, and that the funds shall be used to match Federal funds available for hospital, clinic or health center purposes, and that the local governments in the area where each hospital, clinic, or health center is to be built shall contribute at least as much money for the construction as does the State; and

provided further that the State shall not contribute more than three hundred fifty thousand dollars (\$350,000) to the construction of any one hospital, clinic or health center."

It will be seen, therefore, that before the State Board of Health can approve a grant of state funds under said constitutional amendment, the local governments in the area where the hospital facilities are to be built must contribute at least as much money for their construction as does the State. This the local governments have done. Their action in so doing has been approved and declared legal by the Circuit Court of Madison County, Alabama, by decree rendered on January 3, 1955, in the case of **Huntsville Hospital v. Madison County and City of Huntsville**. A certified copy of this decree has been sent to this office.

This opinion is limited to the facts presented and to the Huntsville Hospital under consideration, and when so considered, your question is answered in the affirmative.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

January 13, 1955

Hon. J. Massey Edgar
County Attorney
Choctaw County
Butler, Alabama

Counties—Courthouses—Municipalities.

Counties may legally pay for electricity consumed by the lights erected on the courthouse square for purpose of lighting courthouse.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of October 1, 1954, is as follows:

"The Alabama Power Company placed ten poles on the Court House Square for lighting purposes of the Square and the streets adjacent

thereto. This construction was made by agreement between the town of Butler and the Alabama Power Company. The Court of County Commissioners agreed with the town of Butler to pay the sum of \$40.00 per month for the electricity used by these lights.

"Please advise if this is a legal charge against the County."

The answer to your question is in the affirmative.

In your request for an opinion, you stated that the lights erected on the courthouse square not only illuminate the streets adjacent thereto but they also illuminate the courthouse and the courthouse square.

Title 12, Section 12, Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560, provides, in pertinent part, as follows:

"The court has authority: 1. to direct and control the property of the county as it may deem expedient according to law, and in this direction and control it has the sole power to locate the courts in the rooms of the courthouse and to designate the rooms to be occupied by the officers entitled to rooms therein, including the circuit judge, if resident in the county, and to change the location of the courts, and the designation of the rooms for officers, as it may deem best and most expedient, and this shall be done by order of the court entered upon the minutes of the court at a regular term of court. In the event the courthouse is inadequate to supply office rooms for such officers, the court may lease such office rooms in a convenient location in the county site and to pay the rental from the county fund . . ."

By the pertinent provisions of Section 12, as amended, *supra*, the county commissioners of Washington County, Alabama, are empowered to "direct and control" county property; and, it is my opinion, that this power includes the power to maintain county property in such a state as to be functional, attractive, and safe.

In an opinion of this office reported in Quarterly Report of Attorney General, Vol 19, page 8, it was ruled that grass and shrubbery could be planted on county property around public buildings to beautify the grounds.

In an opinion of this office reported in Quarterly Report of Attorney General, Vol. 16, page 156, it was ruled that a county might expend funds for beautification of its highways, so long as this expense was incidental to the proper maintenance of the roads.

Also, in an opinion of this office reported in Quarterly Report of Attorney General, Vol. 14, page 286, it was ruled that a county could spend money to "decorate" a county public library building.

The lighting of the county courthouse and the grounds adjacent thereto is as much, or more so, a beautification of that property as planting grass on the side of a road. Having lights shine on the courthouse square not only protects the property against would-be vandals, but it also enhances the attractiveness of the building and grounds. It helps to make citizens of a county proud of their public property, and it also helps to protect them from injury that might otherwise occur as a result of the courthouse and grounds adjacent thereto being in darkness.

Hence, I am of the opinion that the agreement made by the county commissioners to pay for a portion of the electricity consumed by the lights erected on the courthouse square was a legal exercise of the authority granted to them by Section 12, as amended, *supra*.

I am, therefore, of the opinion that Choctaw County, Alabama, may legally pay the sum of \$40 a month for electricity consumed by the lights erected on the courthouse square in the town of Butler.

Very truly yours,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

January 13, 1955

Hon. Frank M. Stewart, Chairman
Agricultural Center Board
Capitol

Merit System—Agricultural Center Board.

The Agricultural Center Board may appoint one confidential assistant or secretary under the provisions of Title 55, Section 301, Code of Alabama 1940, as amended by Act No. 349, General Acts 1943, page 332.

Opinion by Assistant Attorney General Miller.

Dear Sir:

Your request for an official opinion, bearing date of January 11, 1955, is as follows:

“I shall appreciate it if you will advise me whether or not the Agricultural Center Board has authority to employ a Confidential Assistant or Secre-

tary as such employment is provided under the provisions of Title 55, Section 301 of the Code of Alabama 1940, as amended, which statute appears to allow each Board, Commission and Elected Officer to appoint such an Assistant as an unclassified employee under the Merit System Law.

"Your prompt attention to this request will be appreciated."

It is my opinion that the Agricultural Center Board is authorized to employ a confidential assistant or secretary as an unclassified employee under the law establishing a Merit System for employees of the State of Alabama.

The Agricultural Center Board was created by Act. No. 282, General Acts 1945, page 447. This Act, together with Section 3 of Act No. 533, General and Local Acts 1951, page 943, authorizes the Agricultural Center Board to operate and manage the State Coliseum. Section 3 of Act No. 282, supra, authorizes the Agricultural Center Board to employ personnel to carry out its prescribed duties.

The pertinent part of Title 55, Section 301, Code of Alabama 1940, as amended by Act No. 349, General Acts 1943, page 332, which authorizes the employment of a confidential assistant or secretary as an unclassified employee, reads as follows:

"The unclassified service shall include: One confidential assistant or secretary for each board, commission and elected officer and when requested by the Governor for each department head appointed by the Governor . . ."

The foregoing statute clearly authorizes one confidential assistant or secretary for each board, commission, elected officer, etc., and since the Agricultural Center Board has specific duties to perform and is authorized to employ personnel for the performance of such duties, it is my opinion that this is a Board within the meaning of that term as it appears in Section 301, as amended, supra. See Quarterly Report of Attorney General, Vol. 72, page 28, an opinion of this office which held that the Board of Corrections, created pursuant to Act No. 202, General and Local Acts 1953, page 287, was entitled to employ a confidential assistant or secretary as an unclassified employee. See also Quarterly Report of Attorney General, Vol. 69, page 16, and Quarterly Report of Attorney General, Vol. 31, page 84, which relate to the employment of a confidential assistant or secretary under the provisions of Section 301, as amended, supra.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

January 17, 1955

Hon. Jim A. Johnson
Judge of Probate
DeKalb County
Fort Payne, Alabama

Licenses—Contractors.

1. The manufacturing process contemplated under Title 51, Section 499, Code of Alabama 1940, as amended by Act No. 136, General Acts 1947, page 44, is broad enough to cover the mixing of concrete in a transient cement mixer, where it is a part of the process of manufacturing concrete from cement and other ingredients.

2. The proviso contained in Title 51, Section 499, Code of Alabama 1940, as amended by Act No. 136, General Acts 1947, page 44, exempts one from purchasing the manufacturer's license, where the plant which he operates is entirely covered by another specific license section, and where he has purchased the license called for under such section.

3. Where a person is engaged in manufacturing and selling concrete, and also contracts to build driveways and do other contracting work, the fact that he has procured a contractor's license under Title 51, Section 496, Code of Alabama 1940, as amended by Act No. 749, General and Local Acts 1953, page 1012, would not under the proviso contained in Title 51, Section 499, Code of Alabama 1940, as amended by Act No. 136, General Acts 1947, page 44, excuse him from also having to purchase the manufacturer's license, under facts stated.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion, bearing date of September 18, 1954, is as follows:

"My office has recently been confronted with a problem that I would like the Attorney General to pass an opinion on.

"The facts are briefly as follows: Mr. Ernest Haas of Fort Payne, Alabama, owns and operates a transient mixed concrete company. He is engaged in the business of selling ready mix concrete for such jobs as curb and gutter, concrete floors and footings, and other types of work requiring concrete foundations, etc. Mr. Haas has a small frame building, the dimensions of which are about 10' x 12', located on a lot

about 150' x 50'. He uses the small frame building as an office and he has cement, sand, and slag stored on the lot. Mr. Haas has also built a wooden bin of 2½ cubic yard capacity. This bin is built on the edge of a small cliff or dirt bank so that trucks may drive at the bottom of the cliff or dirt bank and be directly under the bin. Adjacent to the bin, but in no way connected or attached thereto, Mr. Haas has two fifty-five gallon drums welded together and uses this as a water tank; attached to the drum is a regular gas hose (the hose and nozzle being like those found on gas pumps). The operation of making concrete involves the following procedure: sand, gravel, and cement are dumped into the bin (no attempt is made to mix these ingredients together); a truck, onto the chassis of which has been affixed a regular transient concrete mixer, is then driven directly under the bin, a man pulls the release and the contents of the bin empty into the truck. Water is then added to the mixture in the truck, or water may be added during the time that the contents of the bin are being released into the truck. The point being, that all the ingredients necessary in making concrete, i.e., sand slag, cement, and water are first brought together inside the transient mixer on the truck. This transient mixer on the truck, with a two cubic yard capacity, then drives away and the concrete is actually made and mixed while the truck is enroute to its destination.

"I have been informed that the Revenue Department has held that a person engaged in business where cement, slag, and water are all mixed together and then poured into a transient mixer truck; that that person would be required to purchase a license as is provided for under Title 51, Section 499, Code of Alabama 1940.

"Since the operation of Mr. Haas' business does not entail the mixing of all the necessary ingredients for concrete until after the ingredients are first brought together inside the transient mixer truck, my office has advised Mr. Haas that he would not be subject to a license under Section 499 of Title 51, Code of Alabama 1940; but would instead be subject to a contractor's license under Section 496 of Title 51, Code of Alabama 1940. It is felt that he would be subject to a contractor's license since he contracts to pour concrete foundations etc.

"We have recently had occasion to discuss this matter with a Revenue Inspector, who is of the opinion that Mr. Haas should be required to purchase a license under Section 499 in addition to the contractor's license (under Section 496) that he already has. Since we disagreed on this matter, we are submitting it to you for an opinion as to the correct interpretation to be given to Section 499 under the facts as set forth above.

"I would appreciate your earliest consideration of this matter."

Additional facts in this case, which have been presented by Revenue

Examiner H. O. Fulmer in a letter to this office dated October 27, 1954, are as follows:

"I am sorry I was so long a time in furnishing you the following information but I thought it best that I investigate further before I answer your inclosed letter.

"Mr. Haas will sell anyone ready mixed concrete and deliver it and pour it for any kind of a job which requires concrete in its structure including the ones mentioned in your letter or he will contract a job which includes the cement, labor and all materials which are necessary to turn out a finished job. For instance he will sell ready mixed concrete by the yard or agree to furnish all concrete necessary to complete a job at a set figure or he will agree on a set figure to furnish all materials, labor and everything necessary to turn out a finished job. He quotes his prices, then the builder has the choice of accepting it on a contract basis for a completed job or the builder can purchase the ready mixed concrete and furnish his own labor to complete the job.

"Mr. Haas has a lot here in Fort Payne where his office is located where he keeps all necessary materials for making concrete stored such as gravel, sand, cement, etc. He has a container on this lot where the correct amount of these materials are placed. Nearby he has a drum in which is placed the correct amount of water for this mixture. These contents then are dropped into a truck which has a rotary mixing tank on it where the water and solids are mixed. No effort is made to mix these contents in the container where they are placed before they are dropped into the truck, of course, they mix some as they drop into the truck. The water and solids enter the truck from different containers never touching each other until inside the tank on the truck where they are mixed in transit.

"Mr. Haas has been purchasing Contracting license under Sec. 496 but didn't purchase Manufacturing License under Sec. 499 which I thought was due."

From the facts contained in your inquiry and in the supplemental letter from Mr. Fulmer, it appears that Mr. Haas has already purchased a contractor's license under Title 51, Section 496, Code of Alabama 1940, as amended by Act No. 749, General and Local Acts 1953, page 1012. It also appears that Mr. Haas is correct in purchasing this license, since, from the description of his activities, at least a part of his business consists of contract work whereby he furnishes labor and materials, including concrete, to complete a job. He is, therefore, liable for the contractor's license on the aggregate amount of the contracts involved, which is the measure of the license.

The principal question involved in your inquiry resolves itself then to whether or not Mr. Haas is excused from paying a manufacturer's license

under Title 51, Section 499, Code of Alabama 1940, as amended by Act No. 136, General Acts 1947, page 44, because of the fact that he has purchased the contractor's license under Section 496, as amended, supra.

Section 499, as amended, supra, reads as follows:

"Every person operating a cotton seed oil mill, cotton mill, cloth mill, towel factory, garment factory, yarn mill, hosiery mill, peanut mill, peanut oil mill, peanut shelling plant, paper mill, pulp mill, mill manufacturing sheeting, rugs, bags, hats, **cement**, carpets, lime, plaster, soap, chemical, acid (other than fertilizer) explosive and all mills manufacturing any finished or semi-finished products of tobacco, thread, yarn, cloth, fur, felt, nylon, paper, jute, rubber, iron, iron ore, copper, brass, tin, coal, coke, sand, **cement**, glass, clay, slag, aluminum, bauxite, ore, grain, other than what is commonly called grist mill, oats, corn, rye, synthetic rubber, oil, stone, crude oil, tar, resin, asphalt, paraffin, plastics, fibers, straw, cellulose or other factory where materials are woven made or assembled: Ten dollars where the investment for plant equipment, supplies and fixtures is less than fifteen thousand dollars; twenty dollars where the investment for plant, equipment, supplies and fixtures is fifteen thousand dollars and less than twenty-five thousand dollars; thirty dollars where the investment for plant, equipment, supplies and fixtures is twenty-five thousand dollars and less than fifty thousand dollars; fifty dollars where the investment for plant, equipment, supplies and fixtures is fifty thousand dollars and less than one hundred thousand dollars; one hundred dollars where the investment for plant, equipment, supplies and fixtures is one hundred thousand dollars and less than five hundred thousand dollars; one hundred and fifty dollars where the investment for plant, equipment, supplies and fixtures is five hundred thousand dollars and less than one million dollars; two hundred dollars where the investment for plant, equipment, supplies and fixtures is one million dollars and over. Provided that such investment shall be the total capital employed in such plant and the person applying for such license shall furnish a sworn statement showing the amount of the investment and accompany the same with a statement taken from the books of the company, showing the amount of such investment and such books shall at all times be subject to the inspection of the department of revenue or its agents. Provided further that the licenses levied under this section shall not apply where the factory, mill or plant which would be licensed by this section is covered by a specific license under this article." (Emphasis supplied.)

In reaching a conclusion, the first point to determine is whether Mr. Haas is a person operating a mill manufacturing a finished or semi-finished product of cement. In an official opinion of this office reported in Quarterly Report of Attorney General, Volume 55, page 59, in quoting from Words and Phrases, it was pointed out that the word "mill," in modern usage, has a very wide and comprehensive meaning and includes various machines or combinations of machinery. The word is now extended to engines or machines moved by water, wind, steam, or otherwise, for carrying on many purposes. The

house or building that contains the machinery, or where the machinery is normally kept, is also referred to as a "mill."

The word "manufacture" means engaging in the business of working raw material into wares suitable for use, giving new shapes, new qualities, and new combinations to matter which has already gone through some artificial process. *State v. Magnolia Packing Co.*, 213 La. 661, 35 So. 2d 422. Century Dictionary defines the word as follows:

"The production of articles for use from raw or prepared materials by giving those materials new forms, qualities, properties, or combinations, whether by hand labor or machinery."

In the official opinion of this office referred to above, the question was asked as to whether or not a plant, where cement, slag, and sand are mixed with water and sold directly to the contractor or builder to be used in construction work, would fall within the definition of the manufacturer's license under Section 499, as amended, *supra*. This office in that opinion ruled that it did.

The fact that, in the case before us, Mr. Haas is using what is called a transient concrete mixer, or one that mixes the concrete en route to the place where it is to be used, does not seem to me to alter the situation. Mr. Haas owns a lot on which is located an office, and at which is stored all the raw materials which he uses. The ingredients are measured into the concrete mixer in the proper proportion from tanks and containers conveniently located on this lot. The making of the concrete is a continuous process, beginning at the lot when the materials are moved from their stock piles and ending when these materials are stirred to the proper degree in the mixing truck. The trucks are but a part of the machinery by which this process is accomplished, and can be considered as a part of the "plant" which completes the manufacture of cement, sand, slag and water into concrete.

I am, therefore, of the opinion that Mr. Haas is operating a plant which manufactures concrete out of cement and these other ingredients and is engaged in a manufacturing process as contemplated under Section 499, as amended, *supra*.

The question then arises as to whether Mr. Haas is liable for the manufacturer's license in the light of the proviso contained in Section 499, as amended, *supra*, and quoted above, and after he has already purchased a contractor's license under Section 496, as amended, *supra*.

In this connection, it appears that Mr. Haas is carrying on two separate and distinct businesses which consist of contracting on the one hand and manufacturing concrete on the other. In some instances the manufacturing consists of at least a part of the job to be done under a contract. In a number of other instances it is obvious that Mr. Haas is carrying on purely

a manufacturing process, in that he is manufacturing the concrete to sell it as such, and independent of any contracting job that he might have, such as the building of a driveway, where the use of cement among other materials is required to complete the job contracted for. However, in both cases the manufacturing is a process distinct in itself.

It, therefore, follows that Mr. Haas is carrying on two different businesses. The proviso contained in Section 499, as amended, *supra*, provides an exemption from the manufacturer's license, only in the case where the mill, plant or factory involved is covered by a specific license, and the operator has procured such license. In this case, the contractor's license is not one associated with Mr. Haas' operation of the concrete mill, as his contracting business is distinct therefrom. Thus, his contractor's license is not a specific license covering his mill, or one that would entitle him to the exemption contemplated by the proviso. This is particularly true as the proviso is an exemption and must be strictly construed and cannot be extended by implication. **Brown v. Protective Life Ins. Co.**, 188 Ala. 166, 66 So. 47; **Bowman v. State Tax Commission**, 235 Ala. 190, 178 So. 216.

It is also a settled principle that a person carrying on more than one business must procure a license for each business, where separate licenses are called for, or that each phase of the operation of a business may bear a privilege license tax. Title 51, Sections 838 and 839, Code of Alabama 1940; Quarterly Report of the Attorney General, Volume 49, page 42; **Pate v. State**, 243 Ala. 44, 8 So. 2d 516; **Brown Plumbing Co., Inc. v. McDowell**, 240 Ala. 485, 200 So. 104.

The foregoing being considered, it is my opinion that Mr. Haas, under the facts related, is due both the contractor's license under Section 496, as amended, *supra*, and the manufacturer's license under Section 499, as amended, *supra*.

Yours very truly,

BERNARD F. SYKES,
Assistant Attorney General
(Title 55, Section 239,
Code of Alabama 1940).

January 18, 1955

Hon. V. C. Helms, Superintendent
Board of Education
Lee County
Opelika, Alabama

Busses—County Boards of Education—Schools.

1. The use of school busses to transport school bands to public functions in general may, or may not, be authorized.

2. The use of school busses to transport high school bands to participate in a gubernatorial inauguration, high school music organizations to participate in music festivals, and high school organizations to state meetings is authorized.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of November 22, 1954, is as follows:

"The Lee County Board of Education has from time to time received requests from band parents organizations for the use of publicly owned school buses for the purpose of transporting high school bands to such activities as Christmas parades sponsored by neighboring cities, Veterans Day parades in neighboring cities and in the capital city of Montgomery. There is on file with the board of education at the present time a request for the use of school busses to transport a high school band to participate in the Inaugural Parade in Montgomery, Alabama, upon the occasion of the Inauguration Ceremonies for the incoming Governor.

"In view of these requests, we should like to make the following inquiries:

"The board of education also has had requests for the use of school buses to transport high school bands and high school glee clubs and choruses to band and music festivals sponsored by the various colleges of Alabama. Similar requests are made to transport Honor Societies, Beta Clubs, Future Farmers of America, and Future Home Makers of America to their State Conventions.

"1. Can a local board of education by and with the advice of the local superintendent of education legally authorize the use of school buses to transport high school bands to participate in activities that are not sponsored by the schools involved, such as Christmas parades sponsored by neighboring cities and Veterans Day parades sponsored by Veterans clubs and neighboring cities?

"2. Does a local board of education by and with the advice of the local superintendent have legal authority to authorize the use of school buses for the purpose of transporting high school bands to the State Capitol for the purpose of participating in an inaugural parade?

"3. Do local boards of education by and with the advice of the local superintendent have legal authority to authorize the use of school buses to transport high school organizations to state meetings of their respective organizations?

"4. Do local boards of education by and with the advice of the local superintendent have legal authority to authorize the use of school

buses for the purpose of transporting high school music organizations to the campuses of state colleges to participate in music festivals sponsored by those colleges?"

This office has held that local school boards may legally authorize the use of school busses to transport high school bands to and from athletic contests in which the high school is engaged. Quarterly Report of Attorney General, Vol. 57, page 15. In that opinion the following rationale, pertinent to the question here under consideration, was used as a basis for the conclusion reached:

"This office has also held that the governing body of a county has authority to appropriate funds to aid public schools in the purchase of music instruments for bands. Quarterly Report of Attorney General, Vol. 51, page 102; Quarterly Report of Attorney General, Vol. 53, page 16.

"The State Department of Education informs me that band music is an approved subject in the course of study in the high schools of the State. Transportation of a high school band to and from athletic contests in which the high school is engaged is in furtherance of the course of instruction in band music. Playing in the band at school athletic contests gives the members of the band an opportunity to demonstrate what they have learned as well as affording them an opportunity to practice as a unit."

In Quarterly Report of Attorney General, Vol. 51, page 124, where it was held that school busses may be used to transport high school athletic teams to and from athletic contests, I find the following:

" . . . The transporting of county school athletic teams to and from athletic contests is a school function which is, in my opinion, clearly in furtherance of that school's program of physical education."

It is apparent from the two opinions above cited that this office is committed to the proposition that a local board of education may authorize the use of school busses to transport students to and from extra-curricular events, where such events are in furtherance of the educational program under the supervision of said board of education. Your attention is directed to the following statutory provisions which, in my opinion, give the county board of education wide discretionary powers in its direction, use and control of any school property, including busses, in furthering the educational policies of the county:

Title 52, Section 62, Code of Alabama 1940:

"Administration and supervision of schools.—The general administration and supervision of the public schools . . . of each county . . . shall be vested in the county board of education . . ."

Title 52, Section 73, Code of Alabama 1940:

"Educational policy of county.—The county board of education shall determine with and on the advice of the county superintendent of education, the educational policy of the county, and shall prescribe rules and regulations for the conduct and management of the schools."

Title 52, Section 74, Code of Alabama 1940:

"Supervision of schools.—The county board of education shall exercise through its executive officer, the county superintendent of education, and his professional assistants, control and supervision of the public school system of the county. The board shall consult and advise through its executive officer, and his professional assistants, with school trustees, principals, teachers, and interested citizens, and shall seek in every way to promote the interest of the schools under its jurisdiction."

It is my opinion that no definite answer may be given to your first question, that is to say, the particular circumstances, the nature of participation involved, and other factors would have to be considered in authorizing the use of school busses to transport high school bands to participate in Christmas parades sponsored by neighboring cities and Veterans Day Parades sponsored by the Veterans Clubs and neighboring cities. It is possible that the local board of education may, in its discretion, conclude that such participation is in furtherance of the school program, and in the absence of an abuse of such discretion, the local school board could authorize such use of school busses.

There is apparently no legal distinction between the participation of a school band at an athletic contest and the participation of a school band in an activity such as the forthcoming inauguration. At least there would seem to be no logical difference in the educational benefits attained thereby. It is, therefore, my conclusion that your second question should be answered in the affirmative.

I assume that the high school organizations, which you refer to in your third question, are those organizations which are an integral part of the school program in your county, and based on such assumption, the above cited opinions of this office, and the statutory provisions hereinabove set out, it is my opinion that the local board of education may, in its discretion, authorize the use of school busses as contemplated by said question.

Your fourth question is answered in the affirmative. That portion of Quarterly Report of Attorney General, Vol. 57, page 15, which is quoted hereinabove, is particularly pertinent to this question.

The above expressions of opinion are limited to those situations wherein the use of school busses for the transportation of the pupils under consideration is in the furtherance of an approved course of study prescribed and

recognized by the State Board of Education, or in furtherance of an authorized educational program. See letter under date of May 21, 1951, to Hon. J. W. Letson, Superintendent, Board of Education, Bessemer, Alabama.

Yours very truly,

JOHN PATTERSON,
Attorney General.

January 26, 1955

Dr. D. G. Gill
State Health Officer
Department of Public Health
Montgomery 4, Alabama

State Board of Health—Hospitals—State and State Departments—
Words and Phrases.

1. Under Act No. 211, General Acts 1945, page 330, the State Board of Health is the sole and official agency of the State to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating nursing homes, diagnostic and treatment centers, and rehabilitation centers.
2. The State Board of Health is authorized to make an inventory and survey of nursing homes, diagnostic and treatment centers and rehabilitation centers, and develop a master plan for the construction of these facilities.
3. The phrase "public hospitals, health centers, and related facilities" includes nursing homes, diagnostic and treatment centers, and rehabilitation centers.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of January 13, 1955, is as follows:

"The 83rd Congress of the United States enacted Public Law No. 482 which amends Public Law No. 725 (79th Congress) to broaden that act to include three new categories or facilities not falling within the scope of Public Law No. 725. These three categories are named in Public Law No. 482 as follows: Nursing Homes, Diagnostic and Treatment Centers and Rehabilitation Centers. Public Law No. 482 clearly establishes

these three categories of facilities as medical facilities and relates them to hospitals.

"Public Law No. 482 further requires that: (1) That a sole State Agency be designated to administer the program within the State, (2) that the State Agency utilize the State Advisory Council required by Public Law No. 725 and that if this Council does not include representatives from the field of rehabilitation that the Council provide for consultation with agencies so concerned and (3) that the State Agency make an inventory and survey of these three categories and develop a master plan for their construction. You will observe that these three requirements are similar to those required by Public Law No. 725.

"Title 22, Sections 204 (4) through 204 (10) Code of Alabama, 1940, 1953 Cumulative Supplement was enacted by the 1945 Legislature to enable the State of Alabama to benefit from the provisions of Public Law No. 725 and designated the State Board of Health as the sole State Agency to receive and administer any Federal funds that may be appropriated for the purpose of Public Law No. 725.

"Inasmuch as Public Law No. 482 is an amendment and extension of Public Law No. 725, does the above quoted section of the Code of Alabama (1) designate the State Board of Health as the sole agency for carrying out the purposes of Public Law No. 482 and (2) authorize the State Board of Health to make an inventory and survey of the type of facilities included in Public Law No. 482 and develop a master plan for the construction of these facilities?

"For your information a copy of Title 6 Public Health Service Act is enclosed. In Title 6, Parts a, b, c and d are Public Law No. 725 and Parts e, f and g are Public Law 482."

In my opinion, both of your questions are answered in the affirmative. Act No. 211, General Acts 1945, page 330, has the effect of designating the State Board of Health as the sole agency for carrying out the purpose of Public Law No. 482. It also authorizes the State Board of Health to make an inventory and survey of the type of facilities included in Public Law No. 482, and develop a master plan for the construction of these facilities.

A part of Section 1 and Sections 3, 5 and 8 of Act No. 211, supra (Title 22, Sections 204(3), (5), (7) and (10), 1953 Cumulative Pocket Part, Code of Alabama 1940), are pertinent to your questions. These provisions are as follows:

"Section 1. The following terms used in this Act shall have the meanings as defined herein unless a different meaning clearly appears from the context. . . . The term **hospital** includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals,

and related facilities, such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals.

"Section 3. The State Board of Health is hereby authorized and required to set up a master hospital plan which shall divide the State of Alabama into regions, districts, and zones, and to define the territorial areas and boundaries of such regions, districts, and zones. The areas may be revised from time to time as conditions change.

"Section 5. The State Board of Health is (a) hereby designated as the sole and official agency of the State of Alabama to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating public hospitals, health centers, and related facilities appropriated by the United States Government or the State of Alabama, and it may receive and administer any and all gifts or donations in general from any individual or agency for the purpose of constructing, equipping, maintaining, and operating such facilities; (b) hereby authorized to enter into contracts with any agency for the purpose of carrying the above into effect.

"Section 8. The State Board of Health is hereby authorized and empowered to purchase or lease land or acquire property by eminent domain; to purchase, lease, rent, or acquire any building or property needed for the purpose of carrying out a hospital construction and operation program; is further authorized to sell, exchange, or otherwise transfer property, land, building, and equipment in order to carry out the comprehensive hospital and health center construction program; and is further authorized to do all things necessary to carry out the powers given in this Act."

Section 5 of Act No. 211, *supra*, clearly and unequivocally designates the State Board of Health as the sole and official agency to receive and administer funds from appropriations by the United States Government for the purpose of constructing, equipping, maintaining, and operating public hospitals, health centers, and related facilities. It is prospective as well as retrospective in its operation. At the time this act was passed by our Legislature, the United States Government did not include in its program nursing homes, diagnostic and treatment centers, and rehabilitation centers. Yet, it is my opinion that the wording of the act is in such general terms that these last mentioned subjects are included in "public hospitals, health centers and related facilities." Therefore, the State Board of Health is designated as the sole and official agency for carrying out the purposes of Public Law No. 482.

Ordinarily, a hospital is an institution for the reception and care of the sick, wounded, infirm or aged person. 41 C. J. S., Hospitals, Section 1; *Noble v. First National Bank of Anniston*, 241 Ala. 85, 1 So. 2d 289. I do not think that it can be reasonably argued that the classifications mentioned above, i. e., nursing homes, diagnostic and treatment centers, and re-

habilitation centers are not included within the purview of the wording of Sections 5 of Act No. 211, *supra*. If said classifications are not in truth hospitals, then at least they are related facilities.

Section 8 of Act No. 211, *supra*, gives the State Board of Health broad and general powers to carry out the construction program for hospitals and health centers, and Section 3 of Act No. 211, *supra*, specifically authorizes and requires the setting up of a master hospital plan. From these two provisions there would certainly seem to be an implied authorization of the State Board of Health to make an inventory and survey of the type of facilities included in Public Law No. 482, *i.e.*, nursing homes, diagnostic and treatment centers, and rehabilitation centers.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 1, 1955.

Hon. Winston Stewart,
Judge of Probate,
Coosa County,
Rockford, Alabama.

Counties—Sheriffs—Expenses.

Under the provisions of Act No. 593, General and Local Acts 1949, page 925, counties may furnish, at their expense, gasoline and oil for use in an automobile used by the sheriff in the performance of his duties in transporting defendants, or for transporting patients to hospitals, or for general use in the performance of the sheriff's duties, including reasonable routine investigations and policing work, where, through no fault of the sheriff, such work does not result in arrest, conviction, etc.; provided, however, that the county may not pay for such gasoline and oil and other equipment and supplies under Act. No. 593, *supra*, in cases where other provisions of the law provide for the payment of same by way of mileage or otherwise.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of January 20, 1955 is as follows:

"I would like to have your opinion on the following:

"Act No. 593 of the 1949 Acts gives the county governing body of each of the several counties authority, upon application of the sheriff of the county, to purchase for the use of the sheriff any equipment or supplies

and pay for any service performed for the sheriff which are reasonably necessary for the suppression of crime, the apprehension of criminals, or the proper performance of the sheriff's duties.

"Would this Act authorize county governing body to furnish gasoline and oil for car furnished to sheriff by the county?

"A. For general use in performance of sheriff's duties?

"B. Patients to hospitals?

"C. Defendants?

"D. For routine investigation and policing work where such work does not result in arrest, convictions etc. which would entitle sheriff to fees or mileage?"

It has been held by this office that a county may properly allow the sheriff a reasonable amount for the use of his automobile, when used in performing his duties in nonsupport cases. Biennial Report of Attorney General, 1934-36, page 604. Also, the county may furnish machine guns, gas guns, and ammunition in connection with the performance of his duties as sheriff. Biennial Report of Attorney General, 1936-38, page 535. Reasonable expenses of investigation of crime made under the provisions of Title 54, Sections 9 and 10, Code of Alabama 1940, when approved by the authority directing the investigation, have likewise been held to be expenses which the county may pay. Quarterly Report of Attorney General, Vol. 47, page 114.

This office has also held that a county may furnish radio equipment to be installed in automobiles owned or operated by the sheriff in the regular pursuit of his duties in detecting crime and apprehending criminals. Quarterly Report of Attorney General, Vol. 46, page 59. Likewise the county may furnish the sheriff with a boat, outboard motor, and grapnel for his use in the recovery of drowned bodies and in ferreting out crime. Quarterly Report of Attorney General, Vol. 49, page 117. It has also been held by this office that a deputy sheriff is an agent of the sheriff, and a necessary expense for a deputy sheriff would be an expense that the sheriff himself would have necessarily incurred. It was further held that the operation and maintenance of an automobile used by a deputy sheriff is a necessary expense for which the county could pay, within the meaning of the local act there under consideration. Quarterly Report of Attorney General, Vol. 55, page 50.

These opinions were written prior to passage of Act No. 593, General and Local Acts 1949, page 925, and should be considered along with said Act in formulating an answer to the questions propounded by you. Act No. 593, *supra*, provides as follows:

"Section 1. That the county governing body of each of the several counties of the State may, in its discretion, and upon application of the sheriff of the county, purchase for the use of the sheriff any equipment

or supplies and pay for any services performed for the sheriff which are reasonably necessary for the suppression of crime, the apprehension of criminals, or the proper performance of the sheriff's duties.

"Section 2. That the cost of any such purchases or services, upon approval by the county governing body, may be paid out of the general fund of the county."

In Quarterly Report of Attorney General, Vol 20, page 104, the following was stated.

" . . . The word 'necessary' means convenient, useful, appropriate, suitable, proper, or conducive to end sought, and does not mean absolutely essential. **Parker v. Pace & Davis**, 82 S. W. (2d) 259, 190 Ark. 950.

"The term 'necessary' is not limited to such things as are absolutely indispensable but includes all such things as are proper, useful, and suitable for the purpose. **Garfield County Commissioners v. Isenberg**, 61 P. 1067, 10 Okla. 378.

"In the Century Digest the verb 'equip' is defined as meaning 'to fit out; furnish with means for the prosecution of a purpose; provide with whatever is needful for efficient action or service'; the noun 'equipment' as meaning 'anything that is used in the equipping, such as furniture, etc.'"

Gasoline and oil furnished drivers of trucks held to be supplies. **West v. Detroit Fidelity and Surety Company**, 118 Neb. 544, 225 N. W. 673, 678.

Act No. 593, supra, is very broad in its provisions and should be reasonably construed in the light of the purposes for which it was enacted. When so considered, I am of the opinion that each of your questions should be answered in the affirmative; provided, however, that the county may not pay for such gasoline and oil and other equipment and supplies under Act No. 593, supra, in cases where other provisions of the law provide for the payment of same by way of mileage or otherwise.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 4, 1955.

Hon. Fuller Kimbrell,
Director of Finance,
Department of Finance,
CAPITOL.

Judges of Probate—Licenses—Costs and Fees—Finance, Department of.

Under Title 51, Section 831, Code of Alabama 1940, as amended by Act No. 700, General and Local Acts 1951, page 1207, judges of probate are entitled to the fifty-cent issuance fee on each type of business license issued, regardless of whether each license is issued on a separate form or on a consolidated form.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of February 2, 1955, is as follows:

"If the State Department of Finance employs the authority of Title 51, Section 844, and redesigns the privilege license which is forwarded to and issued by the several Probate Judges, to have the certificate provide space for listing more than one type of business; thereby increasing the efficiency of issuing these licenses in the Probate Judges' offices and saving thousands of dollars in printing expense, will this change effect, in any way, the payment of the fifty (50c) cent fee to the Probate Judge for the issuance of such licenses?

"In other words, if John Doe is operating a newsstand and sells cigarettes and soft drinks and one certificate is given John Doe for these three separate licenses, will the fee for issuing these three licenses remain as now authorized fifty (50c) cents for each license, or a total of \$1.50?"

In answer to your inquiry, it is my opinion that the revision of the privilege license forms to be forwarded to the probate judges providing space for listing more than one type of business will, in no way, affect the payment of the fifty-cent fee to the probate judges for the issuance of each separate license. In other words, the probate judges would still be entitled to the fifty-cent issuance fee on each type of business license issued, regardless of whether each license is issued on a separate form or on a consolidated form.

Title 51, Section 844, Code of Alabama, 1940, provides as follows:

"§ 844. Duty of department of finance to prepare forms of licenses.—It shall be the duty of the department of finance to prepare and have printed suitable forms of licenses, and as often as need be to furnish

to the several probate judges blank licenses signed by him sufficient for the probable wants of their respective counties, taking their receipts for the same. Each such blank shall have a stub attached thereto, on which shall be printed such matter as the department of finance may prescribe, with appropriate blank spaces to be filled in by the judge of probate upon the issuance of any license. The department of finance shall take and file in his office a proper receipt from the probate judge for the blank licenses furnished him."

Under this section, the Department of Finance is empowered with the administrative function of providing suitable forms. No particular form is prescribed by statute. A form providing for more than one license would be a matter within the administrative determination of the Department of Finance.

The fifty-cent issuance fee allowed to probate judges for issuing licenses under the provisions of Title 51, Section 831, Code of Alabama 1940, as amended by Act. No. 700, General and Local Acts 1951, page 1207, is applicable to each license issued. The mere fact that more than one license may be issued on the same form would not alter this fact. The probate judges would still be entitled to the fifty-cent fee on each type of license issued.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 7, 1955

Hon. Thomas H. Boggs
Circuit Solicitor
17th Judicial Circuit
Linden, Alabama

Solicitors—County Courts.

Under the provisions of Title 13, Section 256, Code of Alabama 1940, a circuit solicitor is authorized to appoint a deputy solicitor in each county of his circuit if not otherwise provided by law, even though the county court and the officials thereof have been abolished in such county by local act.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 24, 1955, is as follows:

"I would like an official opinion to determine if I have authority to appoint a deputy solicitor in Greene County.

"Title 13, Sections 256 and 257 deal with the appointment and salary of deputy solicitors, however, some years ago a Local law was passed in which the County Court and all offices connected therewith were abolished in Greene County."

My answer to your inquiry is in the affirmative.

Title 13, Section 256, Code of Alabama 1940, reads as follows:

"§ 256. Deputy solicitors appointed; removal.—The several circuit solicitors, except as otherwise provided by law, shall appoint a deputy solicitor in each county of his circuit, to represent the state in all cases in the county court and inferior courts, and all preliminary proceedings, applications for bail and habeas corpus proceedings in all courts, aid or act for the circuit solicitor before the grand jury and in all matters in the circuit court when requested to do so by the circuit solicitor, and perform all the duties of the circuit solicitor in his absence when so directed by the circuit solicitor, and such deputies may be removed by the circuit solicitor at pleasure."

It is to be specifically noted that the deputy solicitor, in the county for which he is appointed, has duties other than to represent the State in all cases in the county courts and inferior courts. He is to attend all preliminary proceedings, applications for bail and habeas corpus proceedings in all courts, and is to aid or act for the circuit solicitor before the grand jury in all matters in the circuit court when requested to do so by the solicitor. He is to perform all the duties of the circuit solicitor in his absence when so directed by the circuit solicitor. It, therefore, can readily be seen that the deputy solicitor has many duties to perform other than those performed by him in the county court.

In the case of *State v. Black*, 199 Ala. 321, 74 So. 387, the Supreme Court held that a statute creating the office of county solicitor does not deprive the circuit solicitor of the power given him under Section 256, supra, to appoint the deputy solicitor. This case is on the theory that the county solicitor and the deputy solicitor are not solicitors for the circuit court, but are solicitors for the entire county, and a statute creating the office of county solicitor did not take away any of the powers which the circuit solicitor had in the county.

You are, therefore, advised that even though the County Court of Greene County has been abolished, you still have the authority to appoint a deputy solicitor for Greene County under the provisions of Section 256, supra. It is not otherwise provided by law for the abolition of the office of the deputy solicitor under consideration.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 11, 1955

Hon. Julian Swift
Clerk of the Circuit Court
Tenth Judicial Circuit
Birmingham, Alabama

Jurors and Juries—Witnesses—Counties—Costs and Fees.

1. Witnesses called in cases which have been removed by change of venue from Russell County to Jefferson County should be paid as provided in Title 11, Section 103, Code of Alabama 1940, the payment thereof to be made by Russell County.

2. The county from which cases are removed on motion for a change of venue should pay for the lodging and meals of jurors in such cases.

Opinion by Assistant Attorney General Bridges.

Dear Sir:

Your request for an official opinion, bearing date of February 1, 1955, is as follows:

"Two murder cases have been removed to this County from Russell County. Section 275 title 15 indicates that all expense of said trials is to be paid by Russell County.

"I will appreciate your opinion on the following questions:

"Must Russell County pay the bill for feed and lodging of the jurors:

"Witnesses are paid in Russell County under the general law of 75c a day and 5c a mile and in Jefferson under a local law of \$1.00 and 2½c a mile. Since Russell County or the State must pay the fees, which amount are the witnesses entitled to.

"I will appreciate an early answer as the cases are set February 14, 1955."

I deem it expedient to answer your second inquiry first. It is my opinion that witnesses called to testify in the cases which have been removed from Russell County to Jefferson County, upon a motion for change of venue, should be paid 75c a day and 5c a mile as provided by the general law.—Title 11, Section 103, et seq., Code of Alabama 1940.

Title 15, Section 275, Code of Alabama 1940, under the general subject of change of venue, specifically treats fines and forfeitures and fees of jurors and witnesses as follows:

"§275. Fines and forfeitures, fees of jurors and witnesses not affected by removal.—All fines and forfeitures in such cases go to the county in which the indictment was found, and judgment must be rendered accordingly; and the fees of all jurors and witnesses, on being properly certified by the clerk of the court to which the trial is removed, are a charge on the county in which the indictment was found, in like manner as if the trial had not been removed." (Emphasis supplied.)

Section 1 of Act No. 319, Local Acts 1915, page 196, applicable only to Jefferson County, is as follows:

"That . . . all State witnesses . . . summoned to testify as witnesses for the State in the circuit and criminal courts of said (Jefferson) county, . . . shall be paid one dollar per day, and two and a half cents for each mile traveled in going to and returning from the court house of said county in which the witness testifies, and the clerk of the circuit or criminal court . . . shall give to each witness a certificate showing the number of days he has attended as a witness . . . before said court . . . and the number of miles he has traveled in going and returning from the court house, and the amount he is entitled to receive for such attendance and mileage, and the treasurer of Jefferson County shall pay said certificates in cash out of the general funds of the county on presentation."

I conclude, from a consideration of the above-cited statutory provisions, that Act No. 319, *supra*, contemplates witness fees which are a charge against the treasury of Jefferson County, and that witness fees in cases which are removed to Jefferson County upon a motion for change of venue are unaffected by such local legislation.

It is my further opinion that your first inquiry should be answered in the affirmative. Russell County is liable for the feeding and lodging of jurors serving in cases which have been removed to Jefferson County upon a motion for a change of venue.

Title 30, Section 97, Code of Alabama 1940, provides in pertinent part that whenever a jury is kept together without separation overnight, or for any unusual length of time, the sheriff shall, with the approval of the court, and at the expense of the county, provide for said jurors suitable lodging and meals. "At the expense of the county," in my opinion, also refers to the county from which a case is removed on a motion for a change of venue. It would be manifestly unjust to burden the county to which these cases have been removed with the payment of the expenses for lodging and meals for these jurors. **Howard County v. Frederick County**, 30 Md. 432; 20 C.J.S., Costs, Section 441, page 687.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 16, 1955

Hon. H. A. Thompson,
Chairman, Board of Registrars,
Jefferson County
102 Court House,
Birmingham 3, Alabama.

Veterans—Poll Tax and Poll List—Exemptions—Military and
Naval Affairs—Schools—Colleges and Universities—Licenses.

The Korean conflict having been terminated on January 31, 1955, by Executive Order and Proclamation of the President of the United States, those who enter the armed forces of the United States after January 31, 1955, are not exempt from the payment of poll taxes.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of February 4, 1955, is as follows:

"We will appreciate you sending us a copy of the opinion referred to below:

"At the request of Mr. Jesse Wigger, Greensboro Office, the Tax Collector of Hale County requested an opinion of the Attorney General of Alabama on the subject of poll tax exemption of Veterans who entered the armed forces subsequent to World War II and were honorably discharged therefrom to the Korean conflict. (It is, of course understood that by special legislation all persons who served in World War I, World War II and since June 24, 1950 are exempt from payment of poll tax.) This new opinion holds that persons who served at any time after the Armistice in 1945 and before June 24, 1950 are also entitled to exemption from payment of poll taxes. The opinion is addressed to D. W. Coleman, Tax Collector, dated February 26, 1954.

"Will this same opinion cover exemption for the boys who are in service now or who entered service since the President's recent Proclamation putting all military personnel on peace time basis?"

In accordance with your request, I am sending you, along with this opinion, a copy of the letter of this office to Hon. D. W. Coleman, Tax Collector, Hale County, under date of February 26, 1954.

This office held in an opinion dated January 8, 1951 (Quarterly Report of Attorney General, Vol. 62, page 15), that a person who has honorably

served in the military service of the United States, or who is honorably serving, or shall honorably serve in the military service of the United States during the participation of the United States in the Korean conflict, is entitled to the exemption from poll tax granted by Section 194½, Constitution of Alabama 1901, as amended by Amendment No. XLIX, proclaimed ratified November 17, 1943.

In a letter to Hon. James F. Laseter, Judge of Probate, Barbour County, on May 3, 1951, he was advised that the date of the start of the Korean conflict for the purpose of establishing exemption of veterans from poll tax under Section 194½, as amended, *supra*, was June 24, 1950.

Subsequent to the above opinions, this office held in a letter to Hon. Vance Cleveland, Tax Collector, Bibb County, dated January 21, 1954, that the United States was still engaged in hostilities within the meaning of Amendment No. XC, Constitution of Alabama 1901, proclaimed ratified December 19, 1951, granting exemption from the payment of poll taxes. It follows from this ruling that persons then serving in the armed forces of the United States were exempt from the payment of poll taxes.

In an opinion of this office reported in Quarterly Report of Attorney General, Vol. 63, page 35, and in two letters to Hon. Earl M. McGowin, Director, Department of Conservation, one under date of September 15, 1953, and the other under date of September 22, 1954, relating to exemptions to veterans from the payment of hunting and fishing licenses, it was held that the United States was still engaged in war or hostilities within the meaning of the acts there under consideration.

In an opinion of this office to Hon. C. C. Horton, Director, Department of Veterans Affairs, under date of December 3, 1954, relating to educational benefits for the widows and children of veterans, it was pointed out that the Korean conflict could only be terminated by treaty or legislation or presidential proclamation, or by some other lawful means. Since none of these had occurred up to December 3, 1954, it was the opinion of this office that the United States was, on that date, still engaged in war or hostilities with a foreign state.

The question now presented is whether or not the United States is still engaged in hostilities or war within the meaning of the said constitutional provisions exempting certain persons from the payment of poll taxes.

In my opinion, the President's Executive Order No. 10585, under date of January 1, 1955, which designated January 31, 1955, as the date of termination of combatant activities in Korea or waters adjacent thereto, when considered along with his Proclamation No. 3080, fixing January 31, 1955, and in some instances February 1, 1955, as the terminal dates respecting service in the armed forces entitling persons to certain veterans' benefits, has the effect of terminating the Korean hostilities or war as of January 31, 1955.

As above pointed out, this office has heretofore held in several opinions that these hostilities did not terminate on July 27, 1953, the effective date of the Korean Armistice, which opinions I now reaffirm, and state again that, in my opinion, the Korean hostilities or war terminated January 31, 1955.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 17, 1955

Hon. Murray A. Battles
Legal Adviser
Governor of Alabama
CAPITOL

State and State Departments—Officers and Offices—Employment,
Employers and Employees—Merit System.

1. The following boards and commissions are not entitled to a confidential assistant or secretary under the provisions of Title 55, Section 301, Code of Alabama 1940, as amended by Act No. 349, General Acts 1943, page 332: State Banking Board, Savings and Loan Board, State Board of Agriculture and Industries, Advisory Board of Conservation, Board of Mine Examiners, Board of Appeals of the Department of Industrial Relations, and Armory Commission of Alabama.
2. The following boards and commissions are entitled to a confidential assistant or secretary under the provisions of Section 301, as amended, supra: State Board of Embalming, Board of Nurses' Examiners and Registration, Board of Optometry, State Board for Registration of Architects, Board of Pharmacy, Land Commissioner, State Board of Public Welfare, Board of Pardons and Paroles, State Oil and Gas Board and Bridge Commission.
3. The employees of the Alabama Educational Television Commission are not subject to the provisions of the Merit System Act.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 27, 1955, is as follows:

"Under the provisions of Title 55, Section 301, Code of Alabama 1940, as amended by Act No. 349, General Acts 1943, page 332, and in accordance with a ruling of the Attorney General to the State Personnel Director, dated October 10, 1952, are each of the following boards, bureaus and commissions entitled to a confidential assistant appointed by such board, bureau and commission in addition to those already appointed:

"The State Banking Board—Title 5, Sec. 6, Pocket Part Code 1940.

Savings and Loan Board—Title 5, Sec. 244, Code of 1940

State Board of Agriculture—Tit. 2, Sec. 25, 1940 Code

The Bridge Commission—Tit. 23, Sec. 97, Code of 1940

Advisory Board of Conservation—Tit. 8, Sec. 8

Board of Appeals—Department of Industrial Relations—Tit. 26, Sec. 8

Armory Commission—Tit. 35, Sec. 186, Code of Ala.

(Pocket Part 17(4)—Public Welfare Board—Tit. 49, Sec. 3, Code of Ala.

Pardon & Parole Board—Tit. 42, Sec. 1, Code of 1940

Emtalming Board—Tit. 46, Sec. 121, Code of 1940

Board of Nurses Examiners—Tit. 46, Sec. 189(2) Pocket Part Code

Oil and Gas Board—Tit. 26, Sec. 179(26) Pocket Part Code

Optometrist Board—Tit. 45, Sec. 192, Code of 1940

State Board of Architects—Tit. 46, Sec. 10, Code of 1940

Pharmacy Board—Tit. 46, Sec. 218, Code of 1940

Board of Mine Examiners—Tit. 26, Sec. 53, Code of 1940

Alabama Television Commission—Tit. 52, Sec. 628, Pocket Part

Estate Land Commissioner—Tit. 51, Sec. 278, Code of Ala."

Rather than attempt to answer your inquiry in general terms, I deem it advisable to place the various boards, agencies, and commissions, mentioned in your inquiry, in different categories.

First, I will consider those boards and commissions which are set up within the departments to perform internal departmental duties. The boards mentioned in your request, which fall within this category, are the State Banking Board, Savings and Loan Board, State Board of Agriculture and Industries, Advisory Board of Conservation, and the Board of Mine Examiners.

All of the above boards were established within their respective depart-

ments to perform internal departmental functions. They are not independent boards in any sense of the word. These boards do not have authority to employ personnel as such, and any personnel serving these boards are employees of the various departments and are not employees of the board. Therefore, since these departments do not perform independent functions, but on the contrary perform only internal departmental functions, they are not entitled to a confidential assistant or secretary as provided in Title 55, Section 301, Code of Alabama 1940, as amended by Act No. 349, General Acts 1943, page 332.

The Board of Appeals of the Department of Industrial Relations falls within a category of its own. Title 26, Section 8, Code of Alabama 1940, as last amended by Act No. 268, General and Local Acts 1949, page 391, creating this board, provides that it shall be entirely separate and distinct from, and independent of, the Department of Industrial Relations. However, it is provided in said section that an employee of the department shall be the clerk of the board. Therefore, it appears to me that the Legislature, in creating this board, did not intend for this board to have any independent employees. Any person serving this board, under the provisions of Section 8, as amended, *supra*, is an employee of the department and not of the board. In my opinion, this board is not such a board that comes within the purview of Section 301, as amended, *supra*, and is not entitled to a confidential assistant or secretary.

I will now consider the so-called regulatory boards mentioned in your request. These boards are: The State Board of Embalming, Board of Nurses' Examiners and Registration, State Board of Optometry, State Board for Registration of Architects, and the Board of Pharmacy. The functions of these boards are independent of any other department of the State. Their functions are to determine the fitness of persons who pursue a certain profession.

This office has heretofore ruled that the State Board of Registration for Professional Engineers and Land Surveyors is entitled to a confidential assistant or secretary. Quarterly Report of Attorney General, Vol. 24, page 184.

In my opinion, all of the last above mentioned boards fall into the same category as the Board of Registration for Professional Engineers and Land Surveyors, and may properly and legally employ a confidential assistant or secretary.

The Bridge Commission, created by Title 23, Section 97, Code of Alabama 1940, is given the specific power to employ personnel, and, in my opinion, is entitled to a confidential assistant or secretary.

The Armory Commission of Alabama, Title 35, Section 186, Code of Alabama 1940, is not, in my opinion, a commission that falls within the provisions of Section 301, as amended, *supra*. It is, in truth and in fact,

a public corporation, created for the purpose of holding legal title to the various armories throughout the State. Therefore, since it is a public corporation which has taken as its corporate name, the Armory Commission of Alabama, it is not a commission within the meaning of Section 301, as amended, supra, and is not entitled to a confidential assistant or secretary.

The State Board of Public Welfare, created by Section 3 of Act No. 703, General and Local Acts 1951, page 1211 (Title 49, Section 17(4), 1953 Cumulative Pocket Part, Code of Alabama 1940), is, in my opinion, authorized to appoint a confidential assistant or secretary. Under the provisions of Section 4 of Act No. 703, supra (Title 49, Section 17(5), 1953 Cumulative Pocket Part, Code of Alabama 1940), the board is authorized to employ personnel subject to the provisions of the Merit System Act, and is therefore authorized to appoint a confidential assistant or secretary.

The Board of Pardons and Paroles is in the same category as the State Board of Public Welfare. See Title 42, Section 2, Code of Alabama 1940, as amended by Act No. 599, General and Local Acts 1951, page 1030.

It necessarily follows that the State Oil and Gas Board is in the same category as the last two above mentioned boards and may appoint a confidential assistant or secretary. See Section 5 of Act No. 1, General Acts 1945, page 1 (Title 26, Section 179(28), 1953 Cumulative Pocket Part, Code of Alabama 1940).

In my opinion, the Alabama Educational Television Commission is not entitled to a confidential assistant or secretary. As a matter of fact, its employees are not subject to the provisions of the Merit System Act. See Act No. 81, General and Local Acts 1953, page 124 (Title 52, Section 630, 1953 Cumulative Pocket Part, Code of Alabama 1940). It, therefore, follows that this commission may employ such personnel as it sees fit without regard to the provisions of the Merit System Act.

It is my judgment that the Land Commissioner is entitled to a confidential assistant or secretary. This office has heretofore ruled on a similar question in an opinion found in Quarterly Report of Attorney General, Vol. 69, page 16, wherein it was held that the Securities Commissioner was entitled to appoint a confidential assistant or secretary. I can see no distinction between the Land Commissioner and the Securities Commissioner, insofar as the question here considered is concerned.

Yours very truly,

JOHN PATTERSON,
Attorney General.

February 25, 1955

Hon. M. D. Tingle

Judge of Probate and Chairman of the Board of Revenue and
Control of Chilton County
Clanton, Alabama

Counties—Chilton County—County Engineer—Road and Bridge
Fund—Airports.

1. The public building road, and bridge fund of a county may be used to alter and repair an administration building at a county owned and operated airport.
2. The public building, road and bridge fund of a county may be used to purchase additional land for a county airport in order to construct a paved runway.
3. The public building, road and bridge fund of a county may be used to pay for the construction of a paved runway at a county airport.
4. Chilton County may not appropriate funds to its county engineer to improve the county airport as such an appropriation must be made directly to said airport.
5. County equipment, purchased with the gasoline tax fund, may not be used to construct a runway at a county airport, unless the gasoline tax fund is reimbursed a reasonable rental for said use.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of February 7, 1955, is as follows:

"Chilton County owns an air field situated near Clanton in Chilton County, Alabama, which consists of 90 acres of land and one large hangar and one small hangar. The airport being officially designated as Gragg Field, which field has been used for many years by small aircraft.

"The State Aeronautics Commission has made an appropriation of \$15,000.00 to be matched and used by Chilton County to improve its air field facilities. It is proposed that these funds be matched by Chilton County, and that Chilton County furnish a sufficient amount of

additional funds to the end that our present airport be improved by paving a four-thousand foot runway for the purpose of inducing and promoting cargo-carrying planes to furnish air transportation service to the farmers of Chilton County, many of whom are engaged in producing peaches, berries and other fruits and also fresh vegetables of all kinds. The present large hangar is to serve as a combination administration and cargo building, as well as a hangar.

"The Board of Revenue and Control of Chilton County, Alabama, the Governing Body of the County, has determined that it would be beneficial, and has authorized the acquisition of necessary additional property, and will authorize the doing of the necessary work for the improvement of the airport facilities in Chilton County as soon as it can be determined whether or not Chilton County may use part of the public building, road and bridge fund money, in which fund there is sufficient money to complete the improvement.

"At this time Chilton County has no outstanding indebtedness other than current monthly accounts payable, for which adequate funds are available, other than the public building, road and bridge fund.

"Under Local Act No. 872, Volume 2, Page 1,505, enacted by the Legislature of Alabama of 1951, the Board of Revenue and Control of Chilton County, in making up its annual budget, has already appropriated the public building, road and bridge fund monies to the County Engineer for machinery and equipment. It is contemplated that the Board of Revenue and Control will amend said fund budget and appropriate a sufficient amount of said funds to the County Engineer for the purpose of said airport improvements, or in event this cannot be done, then said Board would appropriate said funds to the airport for the purpose of said improvements.

"I would like to request your official opinion on the following questions:

"1st. Can the Governing Body of Chilton County, Alabama use a part of the public building, road and bridge fund monies for constructing said paved runway?

"2nd. Can the Governing Body of Chilton County, Alabama use a part of the public building, road and bridge fund monies to purchase the necessary additional land to construct said paved runway?

"3rd. Can the County lawfully make this appropriation to the County Engineer, and can the County Engineer use county equipment bought with funds from the gasoline tax fund to construct said runway?

"4th. Can the County lawfully use part of the public building, road and bridge fund monies to alter and repair the present large hangar, so that it may be used as an administration building and cargo hangar?

"In view of the fact that there is a limited time with which the funds offered the county by the State Aeronautics Commission must be used, I would appreciate your earliest, possible reply."

Your first, second, and fourth questions are answered in the affirmative.

A county is authorized to acquire, construct, expand, own, and operate airports or landing fields for the use of airplanes and other aircraft. Title 4, Sections 21-36, Code of Alabama 1940; Quarterly Report of Attorney General, Vol. 24, page 25.

You ask whether your county may use part of the monies now in its public building, road and bridge fund to alter and repair the present large hanger at the airport so that it may be used as an administration building and cargo hanger.

A county may use its public building, road and bridge fund to alter and repair public buildings, provided that said fund has not previously been pledged to the payment of obligations which have not been satisfied. Quarterly Report of Attorney General, Vol. 75, page 50; Title 12, Sections 185 and 186, Code of Alabama 1940. You state that your county has no such obligations.

An administration building of a county owned and operated airport is a public building. Cf. *Sharpe v. Police Jury of Parish of East Baton Rouge*, 194 La. 220, 193 So. 594.

Therefore, I am of the opinion that the contemplated alteration and repair of this building may be paid for with your county's public building, road and bridge fund.

You also ask if your county may use its public building, road and bridge fund to purchase necessary additional land for its airport in order to construct a four-thousand foot runway and to pay for the construction of said runway.

It is my opinion that said fund may be used for said purposes since the administration building, without a paved runway, would be useless for the purpose for which it was constructed. Cf. *Alabama Great Southern Railroad Company v. Reed*, 124 Ala. 253, 27 So. 19. See also letter to Hon. H. E. Lindsey, Chairman, Marion County Board of Revenue, dated January 14, 1955.

Your third question is answered in the negative, subject to the limitations expressed below.

You ask whether the appropriation for the contemplated improvements of your airport may be made to your County Engineer and whether the

County Engineer may use county equipment, purchased with the gasoline tax fund, to construct the runway at the airport.

By virtue of Section 24 of Act No. 872, General and Local Acts 1951, page 1505, the authority of your County Engineer is limited to using funds for the purpose of constructing, maintaining and repairing public roads, bridges and ferries in Chilton County.

Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 772, General and Local Acts 1953, page 1036, provides that the revenue obtained by counties from the tax on gasoline may only be used to construct, improve, maintain and supervise highways, bridges and streets. Also, Amendment XCIII limits the use of gasoline tax monies to certain specific purposes in relation to highways and bridges.

For these reasons, it is my opinion that the appropriation for the improvement of the airport may not be made to the County Engineer, but must be made directly to the airport.

I am further of the opinion that the County Engineer may not use county equipment, purchased with the gasoline tax fund, to construct the runway at the airport, unless the gasoline tax fund is reimbursed a reasonable rental for said use. Idle county road machinery may be rented out at a reasonable rental if said machinery is not presently being used for county road work. Quarterly Report of Attorney General, Vol. 11, page 153, Quarterly Report of Attorney General, Vol. 64, page 39.

Very truly yours,

JOHN PATTERSON,
Attorney General.

February 25, 1955

Hon. C. J. Coley, Chairman,
Court of County Commissioners,
Tallapoosa County,
Dadeville, Alabama.

Jurors and Juries—Compensation — Statutes — Constitutionality—
Officers and Offices.

1. The compensation for services rendered during the year 1954 by the jury commissioners of Tallapoosa County, Alabama, is governed by Title 30, Section 12, Code of Alabama 1940, as amended by Act No. 516, General and Local Acts 1953, page 649, approved September 3, 1953.

2. Act No. 743, General and Local Acts 1953, page 1006, approved September 17, 1953, amending Section 12, Title 30, Code of Alabama 1940, did not become effective so as to increase the pay of jury commissioners until January 18, 1955.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of February 16, 1955, is as follows:

"There has been filed in my office a claim for payment by the President of the Jury Commission, Tallapoosa County, Alabama, for services rendered by the Members of the Jury Commission during the year 1954.

"Tallapoosa County's population according to the Federal Census of 1950 was between 25,000 and 50,000.

"Act No. 516, Regular Session of 1953, approved September 3, 1953, amended Title 30, Section 12, Code of 1940, but the amendment did not change the pay scale of the members of the Jury Commission in counties with a population between 25,000 and 50,000, leaving the pay at \$5.00 per day and not more than \$200.00 per year.

"Act No. 743, Regular Session 1953, approved September 17, 1953, also amended Title 30, Section 12, Code of 1940, did change the pay scale of members of the Jury Commission from \$5.00 to \$10.00 per day in counties with a population of from 25,000 to 50,000, but no member of the commission shall receive more than \$500.00 in any one year.

"As Ex-Officio Chairman of the Court of County Commissioners of Tallapoosa County, Alabama, I am asking you for an official opinion as to which of the two Acts should govern in the payment of the claim on file in my office."

The members of the several jury commissions are appointed by the Governor. They hold office only during the tenure of office of the Governor making the appointment and until their successors are appointed and qualified. Title 30, Section 10, Code of Alabama 1940; Quarterly Report of Attorney General, Vol. 15, page 249; Vol. 31, page 89.

Unless changed by Act No. 743, General and Local Acts 1953, page 1006, approved September 17, 1953, amending Section 12, Title 30, Code of Alabama 1940, the members of the Jury Commission of Tallapoosa County, who were appointed to serve during the tenure of office of former Governor Gordon Persons, were entitled to receive during their term of office \$5.00 per day as compensation for their services, subject to a maximum of \$200.00 for any one year. This is true because Tallapoosa County's population, according to the last preceding federal census was between 25,000 and 50,000. Title 30,

Section 12, Code of Alabama 1940, as amended by Act No. 516, General and Local Acts 1953, page 649, approved September 3, 1953.

By Act No. 743, supra, Section 12 was again amended, and the compensation of members of the jury commission in counties, among others, whose population was between 25,000 and 50,000 was fixed at \$10.00 per day, subject to a maximum of \$500.00 for any one year.

The president and members of the Jury Commission of Tallapoosa County are now seeking their compensation for services rendered during the year 1954. You request my opinion as to what law governs the payment for their services.

Amendment No. XCII, Constitution of Alabama 1901, proclaimed ratified May 16, 1952, provides as follows:

"Any provisions of this constitution or amendments thereto to the contrary notwithstanding, neither the legislature, nor any county of the state shall, by the imposition of new, different, and additional duties or otherwise, increase, or authorize the increase of, the salary, fees or other compensation of any officer of the state or of any county of the state, who is elected or appointed for a fixed term during the term for which he is elected or appointed, regardless of whether such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment; nor shall the legislature or any county of the state in any manner or by any means decrease, or authorize the decrease of, the salary, fees or other compensation of any such officer, during the term for which he is elected or appointed; nor shall the legislature or any county of the state increase or decrease, or authorize the increase or decrease of, the salary, fees or other compensation of any person filling an unexpired term in any such office during the remainder of such term, either before or after the appointment or election of such person to fill the unexpired term. As to officers who are members of any court, board, commission, or similar body whose terms do not run concurrently, any increase or decrease in the salary, fees, or other compensation of the members of any such court, board, commission, or similar body shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire."

Section 68, Constitution of Alabama 1901, provides as follows:

"Sec. 68. The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant, or employe, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office; nor shall any officer of the state bind the

state to the payment of any sum of money but by authority of law; provided this section shall not apply to allowances made by commissioners' courts or boards of revenue to county officers for ex officio services, nor prevent the legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring, or guarding prisoners."

Section 281, Constitution of Alabama 1901, provides as follows:

"Sec. 281. The salary, fees, or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

This office has heretofore held in an opinion reported in Quarterly Report of Attorney General, Vol. 32, page 149, that the terms of office and compensation of jury commissioners are alike fixed by law as are also their duties, so that they are public officers within the meaning and purview of Section 281, *supra*. See also Biennial Report of Attorney General, 1936-38, page 137; Quarterly Report of Attorney General, Vol. 16, page 230; *Hard, State Comptroller, v. State, ex rel. Owen*, 228 Ala. 241, 153 So. 725.

A jury commissioner, when serving as such, holds an office of profit under Section 280, Constitution of Alabama 1901. Biennial Report of Attorney General 1936-38, page 137, *supra*; *State v. Sanders*, 187 Ala. 79, 65 So. 378.

It is my opinion that jury commissioners likewise come within the meaning and purview of Section 68, *supra*, and Amendment No. XCII, *supra*, so that their compensation could not be increased during the term for which they were appointed, under the prohibition contained in said constitutional provision and in Amendment No. XCII, *supra*.

Since no new or additional duties are prescribed for jury commissioners under the provisions of Act No. 743, *supra*, I am of the opinion that both Sections 68 and 281, *supra*, and Amendment No. XCII, *supra*, would prohibit the jury commissioners in Tallapoosa County from receiving for services performed by them during the year 1954 more than \$5.00 per day and more than the maximum of \$200.00 provided by Section 12, *supra*, as amended by Act No. 516, *supra*. It is to be here noted that Amendment No. XCII, *supra*, prohibits an increase in pay even by the imposition of new or additional duties, whereas Sections 68 and 281, *supra*, did not.

It is my opinion that Section 12, *supra*, as amended by Act No. 516, *supra*, is the law governing the pay of jury commissioners in Tallapoosa County for the year 1954.

It is my further opinion that Act No. 743, *supra*, did not become effective as to the increase in pay for jury commissioners until January 18, 1955. This is the earliest date that a new term of office could start for the jury

commissioners. The jury commissioners whose terms of office expired at midnight January 17, 1955, could not receive the increase in compensation provided by Act No. 743, supra, during their terms of office. *State Docks Commission, et al v. State, ex rel. Jones*, 227 Ala. 521, 150 So. 537; *Hawkins v. Jefferson County*, 233 Ala. 49, 169 So. 720; Quarterly Report of Attorney General, Vol. 20, page 95; see letter dated December 10, 1953, to Hon. Henry W. Smith, President, County Board of Revenue, Etowah County, and letter dated June 29, 1954, to Hon. Clyde C. Cargile, Judge of Probate, Fayette County.

Yours very truly,

JOHN PATTERSON,
Attorney General.

March 7, 1955

Hon. Philip Willingham
Chairman, Board of Commissioners
Sumter County
Livingston, Alabama

Counties—Assessments—Plat Book.

Aerial photographs of a county may be purchased by the governing body of the county for use in the preparation of assessment maps and plats.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of January 20, 1955, is as follows:

"The Board of Commissioners of Sumter County, Alabama, respectfully request your opinion on the following matter:

"Our Board has been approached in reference to entering into a cooperative agreement with the United States Department of Agriculture, for the aerial photographing of Sumter County, Sumter County to be furnished copies covering the entire County for use of a Tax Assessor in making his plat books of the County, at a cost to the County of approximately \$457.00. Such photographs would definitely locate roads, creeks, rivers etc. and facilitate a more accurate plating of the plat books especially in cases where parcels of land are described by such land marks rather than government lines. We understand that some Counties have already entered such agreements.

"Will you kindly at your earliest convenience give me your opinion as to whether Sumter County may legally enter such agreement and pay the cost of same as above set out."

The answer to your question is in the affirmative.

Title 12, Section 227, Code of Alabama 1940, provides as follows:

"The courts of county commissioners and boards of like jurisdiction shall have prepared county assessment maps or plats, showing the county boundary lines, main creeks, rivers, railroads, exempt lands, public roads, schoolhouses, and churches, and all lands which have escaped state and county taxation for the next preceding five years, in their respective counties, and which shall also show all subdivisions of lands made for the assessment of taxes or other purposes, and pay for the same out of the county treasury."

It is my opinion that the governing body of a county may enter into an agreement to purchase aerial photographs of the county to aid in the preparation of assessment maps and plats for use by said county. Section 227, *supra*. See also Title 12, Section 12, Subsection 12, Code of Alabama 1940; Title 51, Sections 66 and 67, Code of Alabama 1940, as amended by Act No. 414, General Acts 1945, page 658, and Act No. 360, General and Local Acts 1951, page 648; and Title 51, Section 68, Code of Alabama 1940, as amended by Act No. 360, *supra*.

Therefore, it is my opinion that the Board of Commissioners of Sumter County may purchase from the United States Department of Agriculture aerial photographs of the county for use in preparing assessment maps and plats.

Very truly yours,

JOHN PATTERSON,
Attorney General.

March 7, 1955.

Hon. Paul J. Hooton,
City Attorney,
City of Roanoke,
Randolph County,
Roanoke, Alabama.

Hospitals—Workmen's Compensation—Insurance.

1. Hospital associations organized and incorporated under the provisions of Act No. 211, General Acts 1945, page 330, as amended

by Act No. 271, General Acts 1947, page 114, and Act No. 643, General Acts 1947, page 496, and their branches do not come under, and their employees are not subject to, the provisions of the Workmen's Compensation Law of Alabama.

2. Such hospital associations and their branches are not liable for the negligence or misconduct of its employees or for personal injuries sustained by an employee.

3. Such hospital associations and their branches have authority to insure or provide for insurance of the property or operations of the associations against such risk as the associations may deem advisable.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of February 24, 1955, is as follows:

"The writer as City Attorney of the City of Roanoke, Alabama wishes an opinion from your Office upon the following:

"In Roanoke, Alabama we have a Hospital, same organized under the and set up under the Hill Burton Act, same in pursuance of a corporation organized as provided by the Alabama Statutes; same operated by a Board of Directors, same in this case being 14, namely one from each Beat in Randolph County, Alabama, they being elected and appointed by the Commissioners of Randolph County, Alabama: The Hospital was built with the aid of Federal Funds, and there is outstanding about well quite a bit of outstanding bonds, same being paid by a special tax levied on the property in Randolph County, Alabama by an act of the Voters of said County:

"The present Administrator or acting Administrator of said Hospital is the Mayor of our City: Of course the Hospital is being operated on a basis to stay out of debt, and all funds are conserved with this in purpose of having at all times an efficient and economically operated Hospital for Roanoke and the surrounding community; I might add that there is also a like Hospital at Wedowee, Alabama and with Clinics in Wadley and Woodland, Alabama, all a part of the Randolph County Hospital Association: The foregoing to furnish a statement of the inquiries to be made, and for which an opinion is sought:

"The Hospital has been carrying an Insurance Policy, the usual kind, same for protection under the Workmen's Compensation Act:

"1st Question: Is the Roanoke Branch of the Randolph County Hospital Association bound by and subject to the Workmen's Compensation Law?

"2nd Question: The Hospital, Roanoke Branch of the Randolph County Hospital Association has been carrying Liability Insurance: Would the Roanoke Branch be liable for an act by any of the servants, agents or employees or Doctors using said Hospital? This of course would be whether or no the same would be liable under suit for possible litigation, though none is known of at the time:

"I do not know any opinions concerning matters of the above nature, however they might become of increasing importance. Also, the question of Insurance in both questions is a rather costly item if necessary to be borne."

It is my information, obtained from the Secretary of State, that the Randolph County Hospital Association was incorporated on March 16, 1949, under the provisions of Act No. 211, General Acts 1945, page 330, as amended by Act No. 271, General Acts 1947, page 114, and Act No. 643, General Acts 1947, page 496.

Act No. 211, as amended, *supra*, authorizes the State Board of Health to set up a "master hospital plan" and divide the State into regions, districts and zones. The Board is designated as the sole and official agency of the State to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating public hospitals, and may receive donations for that purpose. The Act also provides for hospital associations, such as the one under consideration here, to cooperate with the State Board of Health for the purpose of constructing, equipping, maintaining, and operating hospitals. A hospital association is authorized by the Act to enter into cooperative contracts with the State Board of Health to carry out these purposes, and to manage, as agent of the State Board of Health, any hospital constructed or owned by the association.

In an opinion rendered on November 1, 1945, and reported in Quarterly Report of Attorney General, Vol. 41, page 22, this office, in considering Act No. 211, *supra*, said:

"Legislation in the public interest for the preservation and protection of the public health has been aptly characterized as follows:

"That the preservation of the public health is one of the duties devolving upon the state, as a sovereign power, cannot be successfully controverted. In fact, among all of the objects sought to be secured by governmental laws, none is more important than the preservation of the public health; and an imperative obligation rests upon the state, through its proper instrumentalities or agencies, to take all necessary steps to promote this object. This duty finds ample support in the police power which is inherent in the state and which the latter cannot

surrender. It is as much for the interest of the state that the public health should be preserved as that life should be made secure. * * *

"The power granted to administrative boards of the nature of boards of health, to adopt rules, by-laws, and regulations reasonably adapted to carry out the purpose or object for which they are created, is generally held not to be a delegation of legislative authority in violation of the usual constitutional prohibition. Such a delegation generally comes within the rule that while it is necessary that a law, when it comes from the law making power, should be complete, still there are many matters relating to methods or details which may be, by the legislature, referred to some designated ministerial officer or body, and that all such matters fall within the domain of the right of the legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision. * * * 12 R. C. L. 1264, § 2, 1265, § 3.

"With reference to the nature of hospitals it is said:

"Being generally established through motives of philanthropy and not for gain, having no stock, declaring no dividends, and endowed by public or private donations, hospitals very generally come within the eleemosynary class of corporations, and when governed directly by the state, and conducted by officers and agents of the state, they are strictly public corporations or governmental agencies, and are entitled to the immunities afforded other public corporations. * * * 13 R. C. L. 939, § 3.

". The business of owning and operating hospitals as defined by the act (§ 1), while heretofore confined in large measure to 'private or corporate enterprise,' is none the less, as appears above, 'when governed directly by the State, and conducted by officers and agents of the State' an exercise of the police power, and a recognized governmental function."

These hospital associations and their branches are, therefore, agencies of the State of Alabama and a part of a statewide plan to protect the public health, and to provide hospital treatment for those of its citizens who have heretofore possibly not enjoyed the benefits thereof. In doing this, these hospital associations and their branches are engaging in purely governmental purposes. *Barbour County Hospital Association v. Hudson*, 256 Ala. 238, 54 So. 2d 489; Quarterly Report of Attorney General, Vol. 51, pages 162 and 195; Vol. 53, page 188; Vol. 57, page 79.

A hospital association and its branches, created and existing for a purely governmental purpose and under the ownership and control of the State, or a governmental subdivision, are not liable for the negligence or misconduct of its employees or for personal injuries sustained by an employee. *Laney v. Jefferson County*, 249 Ala. 612, 32 So. 2d 542; *Moore v. Walker County*, 236 Ala. 688, 185 So. 175; *The Alabama Girls' Industrial School v.*

Adler, et al, 144 Ala. 555, 42 So. 116; **Alabama Girls' Industrial School v. Reynolds**, 143 Ala. 579, 42 So. 114; 41 C. J. S., Hospitals, Section 8, page 341.

The Supreme Court of Alabama has held that the Workmen's Compensation Law of Alabama does not extend its benefits to its own employees, or the employees of its agencies or departments. They must depend on such relief as may be had through the State Board of Adjustment. **Breeding v. Tennessee Valley Authority**, 243 Ala. 240, 9 So. 2d 6; **Employers Insurance Company v. Harrison**, 250 Ala. 116, 33 So. 2d 264.

Since, as above pointed out, these hospital associations and their branches are but agencies of the State of Alabama, it follows that they do not come under, and their employees are not subject to, the provisions of the Workmen's Compensation Law of Alabama.

I am of the opinion, therefore, that both of your questions should be answered in the negative.

I do wish to point out, however, that under the provisions of Section 12 of Act No. 211, as amended, *supra*, a hospital association has authority "to insure or provide for insurance of the property or operations of the association against such risk as the association may deem advisable."

The opinions of this office do not have the force and effect of law, and it might well be that the hospital association deems it expedient and advisable to protect itself by a liability policy of insurance, and to provide for insurance benefits to its employees comparable with those set forth in the Workmen's Compensation Law pending some authoritative pronouncement by the courts to guide them in the premises.

Yours very truly,

JOHN PATTERSON,
Attorney General.

March 15, 1955

Hon. Mike Sollie, III
County Solicitor
Dale County
Ozark, Alabama

Gaming and Lotteries—Words and Phrases.

A contemplated promotion plan, whereby those persons selling livestock at a sale barn and paying a consideration therefor

become participants in a drawing, the winner thereof being awarded a prize, is a lottery.

Opinion by Assistant Attorney General Bridges.

Dear Sir:

Your request for an official opinion bearing date of January 26, 1955, is as follows:

"I would like to have your opinion on a matter that has been presented to me in my capacity as County Solicitor. I have looked into the matter rather thoroughly, but am still in doubt.

"The Dale County Swine Breeders Association, a cooperative is desirous of pulling a promotion stunt in order to attract farmers with their stock to the Association barn for sales purposes.

"Their proposal is this: each merchant who is a member of Ozark Merchant's Association has agreed to give a certificate worth \$5.00 in merchandise to the person whose name is drawn at the end of each weekly sales. The Association proposes to refund to this person the amount deducted from his check for selling and handling.

"As I understand the law, the elements of a lottery are a prize, a chance, and a consideration. Clearly, the farmer selling his stock at the Association barn will pay nothing out of his own pocket in order to win. I am wondering if such a scheme would come under the classification of a 'gift enterprise' and if the refunding of the selling and handling charges would constitute an indirect consideration."

Additional information was requested by a member of my staff and your letter of February 4 is as follows:

"I appreciate your promptness in answering my inquiry and will attempt to clarify the swine-breeders situation. There is a flat 3% charge (of purchase price) made on each animal sold at their barn. This charge is exacted for handling and selling. Both members and non-members of the Association can use the barn and its facilities. Approximately 98% of the stock brought in is brought by members who pay an annual due of \$1.00 to belong to the Association.

"At the end of each sales day, each seller is given a numbered check, which represents his net income from the sale of his animals after the above deduction is taken out. Under the proposed plan, these check numbers, and they start each day with new numbers, will be placed in a receptacle and one number drawn. This will entitle the seller to a refund of his money deducted for handling and selling and will also be given a certificate good for \$5.00 worth of credit toward a purchase

of merchandise at the store of a member of the Ozark Merchant Association."

There are three essential elements which constitute a lottery: (1) a prize or gift, (2) the donee of the prize or gift chosen by lot and (3) consideration. **Yellow-Stone Kit v. State**, 88 Ala. 196, 7 So. 338; 7 L.R.A. 599; 16 Am. St. Rep. 38.

Your original letter of request correctly assumed that there is no question about the presence of the first two elements in the promotion stunt planned by the Dale County Swine Breeders' Association. The gift or prize consists of the certificate worth \$5.00 in merchandise and the refund of the selling and handling charge. The winner of said prize is to be chosen by lot in a drawing at the end of each weekly sale.

As I understand the facts, participation in the drawing is limited to those people who sell stock at the weekly sale, and all those who sell stock at said sale pay a charge for the selling and handling of said stock. The amount of this charge is based upon a percentage of the selling price.

It is my conclusion that the aforementioned selling and handling charge is sufficient consideration to constitute that element of a lottery. **Try-Me Bottling Company v. State**, 235 Ala. 207, 178 So. 231. The said charge is actually paid for the handling and selling, plus the chance to win the prize. **Grimes v. State**, 28 Ala. App. 4, 178 So. 69, cert. den. 235 Ala. 192, 178 So. 73.

Having concluded that the element of consideration is present, it is obvious that this promotion stunt is a lottery. **Try-Me Bottling Company v. State**, supra, and **Grimes v. State**, supra.

Yours very truly,

JOHN PATTERSON,
Attorney General.

March 17, 1955

Hon. Bert E. Thomas
Tax Assessor
Mobile County
Mobile, Alabama

Tax Assessor—Mobile County—Penalties.

Section 4, Act No. 344, General and Local Acts 1951, page 632, vests in the tax assessors of the counties affected by such act a measure of discretion as to the imposition of the penalty provided by such act under the circumstances considered.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of March 10, 1955, is as follows:

"Will you please refer to Section 4 of Act No. 344 of the 1951 Session of the Legislature, page 632, and render an official opinion as to whether or not a tax assessor operating under provisions of this bill is vested with a measure of discretion in applying a penalty on unreported improvements, or whether the imposition of the penalty is mandatory.

"It so happens that the Board of Equalization of this County is currently undertaking an inventory of all the property located within the boundaries of Mobile County. In many instances we find ourselves unable to determine from the records furnished us by the Board of Equalization whether the increase of valuation of a given assessment indicates a re-appraisal of the property in question, or whether such increase in valuation results from additions or improvements to the property. It is not practicable, furthermore, within the limits of the time or personnel allowed us, to institute such an extensive inquiry as would enable us to have all the facts in each case upon which the Board of Equalization established their values."

You have requested that I review the provisions of Act No. 344, General and Local Acts 1951, page 632, pertaining to the assessment of property in certain of the counties of the State, and furnish you my opinion concerning the matter of imposition of penalty on unreported improvements.

Section 4 of Act No. 344, *supra*, provides that, in the event any person making improvements on a structure or building fails to report the same to the tax assessor as required by this act, a penalty **may** be added to the assessed value of such improvements. Section 4 likewise provides that, if a structure or building has not been heretofore assessed and is unreported to the tax assessor by the owner thereof, here again, a penalty of 10% of the current tax value as determined of such structure or building **may** be added. You inquire as to whether the use of the word "may" in the two instances cited above vests some measure of discretion in the tax assessor as to the imposition of this 10% penalty.

You further advised that in instances in your county you find yourself unable to determine from the records furnished you by the Board of Equalization, indicating an increase in valuation of certain assessments, whether such increase results from a reappraisal of the property in question, or whether, in fact, such increase results from additions or improvements to the property. You further advise that you have neither the personnel nor time to institute an investigation or review in each particular instance, and would, therefore, like to know if you are vested with a discretion as to the imposition of penalties in these cases.

From my consideration of Section 4, *supra*, I am of the opinion that such section does serve to vest a measure of discretion in the tax assessor as to the imposition of penalty as to unreported improvements. In considering this question, I reviewed the predecessor to Act No. 344, *supra*, viz., Act No. 91, General and Local Acts 1949, page 115. This former act likewise had application to Mobile County, as well as certain other counties of the State, and contained somewhat similar provisions to those of Act No. 344, *supra*. I note that in the 1949 act there was a mandatory provision as to the assessment of the penalty on unreported improvements. As I have noted, such is not the case in Act No. 344, *supra*, which is a later enactment, and evidently was drafted and enacted for the purpose of superseding the provisions of Act No. 91, *supra*. To me, this change must be accorded some significance and I am of the opinion that this latter act (Act No. 344, *supra*) does vest a discretion in the tax assessor in regard to the assessment of the penalty here considered.

It is my further opinion as regards the administration of this particular portion of the act that, in those instances where there is an evident and flagrant violation on the part of the taxpayer which is known to the tax assessor, the tax assessor should proceed to assess the 10% penalty as authorized by the act. On the other hand, in those instances where the failure on the part of the taxpayer resulted through no fault of his own, or, as in those instances mentioned by you in your request, where you are not furnished adequate information as to whether or not the facts warrant the imposition of such penalty, I am of the opinion that you may exercise a discretion as to the imposition of such penalty, and if you do not feel that same should be imposed, that you may decline to assess such penalty.

Very truly yours,

JOHN PATTERSON,
Attorney General.

March 17, 1955

Hon. W. O. Dobbins, Jr., Director
State Planning Board
711 High Street
Montgomery 4, Alabama

State Planning Board—Municipalities—United States.

Under the provisions of Section 5 of Act No. 183, General Acts 1943, page 163, as amended by Act No. 571, General and Local Acts 1949, page 899 (Section 373(5) of Title 55, 1953 Cumulative Pocket Part, Code of Alabama 1940), the State Planning Board is authorized to operate in the field of municipal planning and also to accept Federal grants in aid for this purpose.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of March 10, 1955, is as follows:

"Under the provisions of Sections 701 and 703 of the Housing Act of 1954 urban planning grants were made available to states and municipalities by the Federal Government. The purpose of these urban planning grants is to extend city planning activities. The interest of the Federal Government revolves around their activities in slum clearance and urban redevelopment. One of the requirements imposed by the Federal Government for Federal assistance on an urban redevelopment or slum clearance project is that the community have a comprehensive community plan.

"Under Title 55, Section 373(5), 1953 Cumulative Pocket Part, Code of Alabama 1940, the State Planning Board has authority to provide technical assistance to Alabama municipalities on city planning programs and also to accept Federal funds as grants-in-aid on such a program.

"The officials of the Housing and Home Finance Agency require that a legal opinion be given substantiating our authority to operate in this field and to accept Federal funds for the purpose of extending these activities. While the law seems clear enough, they still want a letter from your office indicating this.

"We will appreciate hearing from you on this as soon as possible."

In your request you make reference to Title 55, Section 373(5), 1953 Cumulative Pocket Part, Code of Alabama 1940. This section is Section 5 of Act No. 183, General Acts 1943, page 163, as amended by Act No. 571, General and Local Acts 1949, page 899, and will be so referred to in this opinion. Said section is quite lengthy and it would serve no purpose for the question considered here to quote the section in its entirety.

Under the provisions of the section in question, there is no question as to the authority of the board to assist municipal corporations in working out its planning problem.

Section 5 of Act No. 183, as amended, *supra*, insofar as the first part of your inquiry is concerned, reads as follows:

" . . . The board shall advise and cooperate with municipal, county, regional, and other local planning boards within the State for the purpose of promoting co-ordination between the state and local plans and development. The board shall, upon the request of any appropriate

municipal, county, or other local board or official, transmit information possessed by it which bears upon such co-ordination. The board shall upon the request of the board of county commissioners of any county or the council of any municipality or subdivision, make a study of and report upon any planning problem of such county, municipality, or subdivision submitted to it, . . ."

In regard to the second part of your inquiry, you are advised that, in my judgment, Section 5 of Act No. 183, as amended, supra, is direct authority for the State Planning Board to accept grants in aid from the Federal Government to carry out the purposes of Act No. 183, as amended, supra. One of the purposes of this Act is to coordinate the State building plan as a whole with that of municipal corporations. In this regard, Section 5 of Act No. 183, as amended, supra, further provides in part as follows:

" . . . to accept unconditional gifts of money to be expended in the furtherance of the purpose of this act; to supplement any moneys advanced for the purposes of this act by the Federal government or by any state, county, municipality, corporation, association, society, or individual; and to enter into any cooperative agreement or contract with any instrumentality of the Federal government, with any group of States, or with any municipality or county government of Alabama which in the judgment of the board will effectuate the purpose of this act."

It can readily be seen from the above-quoted portion of said section that the State Planning Board is authorized to accept grants in aid from the Federal Government for the purpose of operating in the field of municipal planning or in any other field.

Yours very truly,

JOHN PATTERSON,
Attorney General.

March 17, 1955

Hon. Bert E. Thomas
Tax Assessor
Mobile County
Mobile, Alabama

Taxation—Municipalities—Tax Assessors.

1. The penalty of 10% provided for tax delinquencies by Title 51, Section 52, Code of Alabama 1940, is applicable to those municipal taxes becoming delinquent if same are assessed and

collected under the optional method of collection provided for by Title 37, Section 698-732, Code of Alabama 1940, Section 732 being last amended by Act No. 263, General and Local Acts 1953, page 329.

2. The opinions reported in Biennial Report of Attorney General 1928-1930, page 823, Quarterly Report of Attorney General, Volume 13, page 23, and Quarterly Report of Attorney General, Volume 30, page 52, are hereby overruled or modified to conform to the conclusions expressed herein.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of December 1, 1954, is as follows:

"Please refer to an opinion dated October 14, 1938, addressed to Hon. Joe Patton, Tax Collector, Livingston, Alabama, recorded in Volume 13, page 23 of the Quarterly Reports of the Attorney General of Alabama, and to an opinion dated February 5, 1943, addressed to Hon. E. D. Merrill, Attorney for County Commission, Anniston, Alabama, which opinion is recorded in Volume 30, page 52, of the Quarterly Reports of Attorney General.

"Both of these opinions hold that a penalty on State and County Ad Valorem Tax does not attach to Municipal tax.

"In view of your opinion to this office dated August 18, 1954, in which you hold that exemptions of State and County Ad Valorem Taxes extend to Municipal Tax, and specifically, in view of the language contained in Section 722 of Title 37 of the 1940 Code of Alabama as amended, please advise us if the two opinions above relating to a penalty on municipal tax should be overruled."

Fursuant to your request I have made studied review of the opinions cited in your request in the light of my opinion addressed to you under date of August 18, 1954 (Quarterly Report of Attorney General, Vol. 76, page 48), as well as statutory provisions which have come into our law since the date of rendition of at least two of the opinions cited above. After such study and review, I have concluded that Title 51, Section 52, Code of Alabama 1940, making provision for the accrual of a penalty of 10% of the taxes so assessed, should be considered as applicable to municipal taxes as well as state and county taxes becoming delinquent.

I arrive at such conclusion primarily due to the language of those statutes set out within Title 37, Sections 698-732, Code of Alabama 1940,

Section 732, being last amended by Act No. 263, General and Local Acts 1953, page 329, prescribing an optional method of collecting municipal taxes. Particular reference should be made to Section 701, supra, providing that:

"The tax collector of the counties in which such municipalities are situated shall collect all property taxes for such municipalities at the same time and in the same manner and under the same laws that state and county taxes are collected." (Emphasis supplied.)

Section 722, supra, likewise referred to by you in your request for opinion, provides, with reference to the tax assessor, that:

"The county tax assessor shall calculate and enter municipal taxes owing to such municipalities on the descriptive lists coming to him under and in accordance with the provisions of law in regard to state and county taxes, in the same manner and way that he is required to do as to state and county taxes, and all provisions, proceedings, and requirements as to state and county taxes shall be applicable to such municipal taxes." (Emphasis supplied.)

Furthermore, it is provided, with reference to the collection of municipal taxes, by Section 730, supra, that:

"All laws now in force or hereafter enacted in regard to the collection of state and county taxes and procedure, with reference thereto, and the enforcement of collection shall apply to and be in force as to such municipal taxes, except as such laws are changed by or in conflict with the provisions of this article and the county tax collector shall collect or enforce the collection of such municipal taxes at the same time, in the same manner and way and as a part of one and the same collection as the collection of state and county taxes and all procedure incident to or in any wise connected with the collection of state and county taxes shall be equally applicable to the collection of said municipal taxes and all such municipal taxes shall be collected in the same way and in the same proceedings as state and county taxes." (Emphasis supplied.)

I am not unmindful of the former opinions of this office reaching a contrary conclusion. The first of these is reported in Biennial Report of Attorney General 1928-1930, page 823. At a later date this office was asked to consider the opinion above referred to, and under date of October 14, 1938, in an opinion reported in Quarterly Report of Attorney General, Volume 13, page 23, the holding of the opinion reported in the Biennial Report, 1928-1930, above referred to, was reaffirmed. However, it is well to observe that at the time of the rendition of each of these opinions the writers thereof were considering, not those statutes which I have quoted above, but what was then Section 3095 of the Code of 1923, later incorporated in its entirety as Section 201 of Act No. 194, General Acts 1935, page 256 (Alabama Revenue Laws of 1935). Inspection will reveal that there is little or no

similarity between the provisions of Section 201, *supra*, and those statutes which I have quoted herein.

It is quite true, as pointed out by Mr. Justice Gardner in the case of the *City of Opp v. Brogden, et al.*, 236 Ala. 180, 181 So. 752, that the language of Section 201, *supra*, was broad making it evident that the lawmakers intended, by so comprehensive an adoption for the municipal corporations of the laws relating to the assessment and collection of state and county taxes, to leave the details of practical operation thereof to be supplied by judicial construction of the several statutory provisions. In the light of this pronouncement by the Supreme Court, the opinion reported in Quarterly Report of Attorney General, Volume 13, *supra*, concluded that the municipalities would not be permitted to collect the 10% penalty imposed upon delinquents failing to list their taxable property on or before the third Monday in January. As noted, this in effect reaffirmed the opinion previously reported in Biennial Report of Attorney General 1928-1930, *supra*.

Reviewing this matter further, I find that Section 3095 of the Code of 1923, later incorporated as Section 201 of Act No. 194, *supra*, was not brought forward in the Code of Alabama 1940. Rather, it appears that the provisions of Act No. 300, General Acts 1931, page 337, originally enacted as having application only to municipalities of a certain designated population figure, were carried forward into the Code of Alabama 1940 as Section 698, *et seq.*, *supra*, and now serve to constitute the optional method for collection of municipal taxes. It is, therefore, evident that one considering your inquiry as of this date must view same in a different light than did the writers of the opinions heretofore mentioned.

Considering this question in the light of the specific statutes that I have quoted above, and particularly the emphasized portions of such statutes, leads me to the conclusion that, with the adoption of the provisions of the Code of 1940, it became the expressed intent and purpose of the lawmakers to provide that each and every provision of our law having application to the assessment and collection of state and county taxes would likewise have application to the assessment and collection of municipal taxes, should the municipalities avail themselves of the optional method of collecting such taxes through the medium of utilizing the facilities of the offices of the tax assessor and tax collector of the county. This, in my opinion, would include the imposition of the 10% penalty for accrual upon delinquent assessments provided in Section 52, *supra*.

I am keenly aware of the fact that statutes imposing penalties for tax delinquencies must be strictly construed and that this is such a statute. However, it would appear to me that, at least on the three occasions I have set out earlier herein, the lawmakers have endeavored to make clear and unambiguous their intention as to the full application of our laws pertaining to the assessment and collection of state and county taxes to the similar assessment and collection of municipal taxes in those cases where the municipi-

palities have availed themselves of the use of the optional method of collecting same.

In view of my conclusions as above expressed, those opinions rendered prior to the adoption of the Code of Alabama 1940, in conflict herewith are hereby overruled and this opinion is substituted in lieu thereof. The opinion reported in Quarterly Report of Attorney General, Volume 30, page 52, a portion of which treats of this same matter, appears to reaffirm former opinions of this office rendered prior to the adoption of the Code of 1940. In doing so, this office was in error and consequently, I would advise that that portion of the opinion mentioned should be modified to conform to the views expressed herein.

In conclusion I would advise that, in those instances where the municipalities of this state have availed themselves of the optional method of collecting taxes set out in Section 698, et seq., supra, the penalty of 10% provided for in Section 52, supra, does have application to those municipal taxes becoming delinquent in the process of assessment and collection.

Very truly yours,

JOHN PATTERSON,
Attorney General.

March 23, 1955

Hon. Melvin Dawkins, Administrator
Alabama Alcoholic Beverage Control Board
CAPITOL

Alabama Alcoholic Beverage Control Board—Act—Municipalities—
Licenses.

1. The governing body of a municipality cannot revoke or suspend any license issued by the Alabama Alcoholic Beverage Control Board for the sale of spirituous, vinous or malt beverages.
2. The governing authorities of a municipal corporation may not refuse to issue a permit or license to a licensee of the Alabama Alcoholic Beverage Control Board doing business within the police jurisdiction of such municipality.
3. The Alabama Alcoholic Beverage Control Board is the only authority vested with the power to revoke or suspend a license issued by it.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of March 18, 1955, is as follows:

"Please give me an official opinion on the following questions:

"1. Can the governing authority of a municipality revoke or suspend any license issued by the ABC Board for the sale of spirituous, vinous or malt beverages under the provisions of Section 13, 26, 27 and 28 of Title 29, Code of Alabama 1940?

"2. Can the governing authority of a municipality refuse to issue a permit or license to a licensee of the ABC Board doing business outside of the municipality, but within the police jurisdiction thereof? (See report of Attorney General 1936-38, page 446)

"3. Section 20, Title 29, Code of Alabama 1940 provides 'The Board shall have full and final authority as to the suspension or revocation of any license issued hereunder.' Since municipal authority to issue licenses or permits is denied under the ABC Act, can a liquor or alcoholic beverage license be revoked or suspended by any authority other than the ABC Board?

"Your prompt compliance with this request will be appreciated."

My answer to your first question is in the negative.

Subsection (b) of Section 2, Title 29, Code of Alabama 1940, reads as follows:

"(b) Except as herein otherwise expressly provided, the purpose of this chapter is to prohibit transactions in liquor and alcohol, and malt or brewed beverages, which take place wholly within the state, except by and under the control of the board, as herein specifically provided, and every section and provision of this chapter shall be construed accordingly. The provisions of this chapter, through the instrumentality of the board, and otherwise, provide the means by which such control shall be made effective. This chapter shall not be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of this state."

Section 5 of Title 29, Code of Alabama 1940, sets out the functions, duties and powers of the Alabama Alcoholic Beverage Control Board. Among these powers are the following:

1. To control the possession, sale, transportation and delivery of alcoholic beverages as enumerated and defined therein.
2. To grant, issue and suspend or revoke for cause liquor licenses, and alcohol permits, as provided in this title.
3. To grant, issue and suspend or revoke for cause malt or brewed and vinous beverage licenses, as provided in this title.

It is to be specifically noted from subsection (b) of Section 2, hereinabove quoted, that no transaction in liquors and alcohol and malt or brewed beverages shall take place within the State of Alabama, except by and under the control of the board as provided in Title 29, supra.

Under the provisions of Section 5, supra, it is to be specifically noted that the Alabama Alcoholic Beverage Control Board has control of the possession, sale, transportation and delivery of the alcoholic beverages enumerated in Title 29, supra. It is to be further noted that the board has the specific authority to suspend or revoke the license issued by it.

From a reading of the specific sections hereinabove quoted and Title 29, Code of Alabama 1940, in its entirety, the conclusion is inescapable that the board, and not municipal corporations, has the authority to suspend or revoke a license for the sale of spirituous, malt or vinous beverages.

You are, therefore, advised that, in my opinion, the governing body of a municipal corporation is without any power to revoke or suspend a license duly issued by the Alabama Alcoholic Beverage Control Board for the sale of spirituous, vinous or malt beverages.

Your second question has been answered in the negative by a former opinion of this office found in Quarterly Report of Attorney General, Vol. 7, page 171. In short, this opinion holds that the governing authority of a municipal corporation may not refuse to issue a municipal license to a licensee of the Alabama Alcoholic Beverage Control Board, when said State license has been duly and properly issued. I reaffirm this holding.

In answer to your third question, you are advised that the Alabama Alcoholic Beverage Control Board is the only State agency vested with the power to revoke or suspend a license issued by it.

As stated by you in your letter of inquiry, Section 20 of Title 29, Code of Alabama 1940, provides that the Alabama Alcoholic Beverage Control Board shall have full and final authority as to the suspension or revocation of any license issued by it.

I desire to call your attention to the pertinent part of Section 25 of Title 29, Code of Alabama 1940, which reads as follows:

"Licenses issued under this chapter to distributors, wholesalers and retailers shall, unless revoked in the manner provided in this chapter, be valid for the license year which, in the case of retailers, shall begin on the first day of January of each year and, in the case of distributors and wholesalers, shall be for such license year as may be established by the board. . . ."

The above portion of Section 25, supra, in no uncertain terms, provides that licenses issued by the Alabama Alcoholic Beverage Control Board to distributors, wholesalers, and retailers shall remain in force and effect until the same are revoked; and, in my opinion, the word "revoke" carries with it the right to suspend, in the manner provided in Title 29, supra. Nowhere in said title can it be found that any authority, other than the Alabama Alcoholic Beverage Control Board, is empowered to revoke or suspend the license issued by the Alabama Alcoholic Beverage Control Board.

Yours very truly,

JOHN PATTERSON,
Attorney General.

March 24, 1955

Hon. A. G. Weaver, Jr., Secretary,
Escambia County Hospital Board,
Brewton, Alabama.

Hospitals—Insurance.

1. Hospital boards organized and incorporated under the provisions of Act No. 46, General and Local Acts 1949, page 68, and operating county hospitals, are not liable to patients, employees, or visitors for the negligence or misconduct of their servants, agents, or employees.

2. Such hospital boards have authority to provide for such insurance as they may deem advisable.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of March 18, 1955, is as follows:

"The Escambia County Hospital Board is a non-profit, public corporation organized under the laws of the State of Alabama and said Board is presently operating the D. W. McMillan Memorial Hospital in Brewton, Alabama, and the Greenlawn Hospital in Atmore, Alabama. Some question has arisen as to whether or not the Escambia County Hospital Board, which is a public corporation and an agency of Escambia County, Alabama, can be sued in connection with the operation of these two hospitals. If it should be determined that the Hospital Board is liable for suits the members of the board feel that certain types of insurance should be carried to protect the board whereas this insurance would be an unnecessary expense if the board is exempt from suits. Therefore, the board has instructed me to write to you and request an official opinion from you in answer to the following questions:

"1. What is the liability of the Escambia County Hospital Board with reference to patients in either of the two public hospitals operated by said Board?

"2. What is the liability of the Escambia County Hospital Board with reference to employees in either of the two public hospitals operated by said Board?

"3. What is the liability of the Escambia County Hospital Board with reference to visitors in either of the two public hospitals operated by said Board?

"Please give these matters your consideration and advise us at your earliest convenience upon receipt of this letter."

It appears from the facts stated in Quarterly Report of Attorney General, Vol. 66, page 13, that the Escambia County Hospital Board was organized under the provisions of Act No. 46, General and Local Acts 1949, page 68.

It further appears from said opinion that Escambia County has levied a tax for hospital purposes under the provisions of Amendment No. LXX, Constitution of Alabama 1901, and that the Escambia County Hospital Board is charged with the duty of collecting, disbursing, handling, or accounting for the funds raised by said special tax.

Amendment No. LXX, *supra*, is almost identical with Amendment No. LXXII, Constitution of Alabama 1901. One applies to Escambia County alone while the others applies to all counties in the State except Mobile, Montgomery, and Jefferson.

In considering Amendment No. LXXII, *supra*, the Supreme Court of Alabama, in the case of *In Re Opinion of the Justices*, 252 Ala. 194, 41 So. 2d 559, said:

“ . . . By the adoption of this amendment, the electorate of the state has set up a vehicle by which the electorate of the several counties falling within the purview of the amendment may tax themselves for the purpose of acquiring and maintaining **county hospitals and public health facilities** as a county institution. . . .” (Emphasis supplied.)

It seems clear from the opinion of this office reported in Vol. 66, page 13, *supra*, that the Escambia County Hospital Board is a proper agency to handle the funds derived from the special tax levied under the provisions of Amendment No. LXX, *supra*. There the use of said funds by the board to lease hospital facilities was expressly approved. See also **Barbour County Hospital Ass'n. v. Hudson, et al.**, 256 Ala. 238, 54 So. 2d 489.

This office has held that the purpose of Act No. 46, *supra*, was to provide for an independent agency of the county to supervise the operation of hospitals and other health facilities of the county. Quarterly Report of Attorney General, Vol. 66, page 16.

In addition, this office has also held, in Quarterly Report of Attorney General, Vol. 62, page 65, that a hospital board organized under the provisions of Act No. 46, *supra*, is exempt from the payment of sales tax on purchases made by the board. In reaching this conclusion, it was said:

“The purchases which you describe are for use in the Marshall County Hospital, a public corporation and an agency of the county. The sales, therefore, are to the county, and the exemption in Title 51, Section 755(b), Code of Alabama 1940, as amended by Act No. 211, General and Local Acts 1949, page 302, applies. This exemption is granted because the hospital is an agency of the County, and is not granted on the ground that a hospital is a charitable institution.”

It appears, therefore, that the hospitals mentioned in your request are county hospitals and are being operated by an agency of the county.

Under the provisions of Act No. 46, *supra*, the Escambia County Hospital Board is a nonprofit corporation with no part of its net earnings inuring to the benefit of any member thereof or other individual or private corporation. These hospital boards are a part of a state-wide plan to protect the public health, and to provide hospital treatment for those of its citizens who have heretofore possibly not enjoyed the benefits thereof. In doing this, these hospital boards are engaging in purely governmental purposes. **Barbour County Hospital Ass'n. v. Hudson, et al.**, *supra*; **Moore v. Walker County**, 236 Ala. 688, 185 So. 175; **Laney v. Jefferson County**, 249 Ala. 612, 32 So. 2d 542; Quarterly Report of Attorney General, Vol. 51, pages 162 and 195; Vol. 53, page 188; Vol. 57, page 79.

In the absence of statutory provisions to the contrary, a hospital created and existing for purely governmental purposes and under the exclusive ownership and control of the state or a governmental subdivision is not

liable for the negligence or misconduct of its employees, or for personal injuries sustained by an employee, although a statute may declare it to be a corporation which may sue and be sued. This seems to be the rule whether the action is against the State, a county, a municipal corporation, or a hospital corporation created by the State to act as its agent in case of those physically or mentally unwell. **White v. Alabama Insane Hospital**, 138 Ala. 479, 35 So. 454; **Turk v. Board of Education of Monroe County**, 222 Ala. 177, 131 So. 436; **Moore v. Walker County**, supra; **Hawkins v. State Board of Adjustment, et al.**, 242 Ala. 547, 7 So. 2d 775; **Laney v. Jefferson County**, supra; 41 C. J. S., Hospitals, Section 8, page 341; 26 Am. Jur., Hospitals and Asylums, Section 12 and 13, page 594; 25 A. L. R. 2d 203; opinion to Hon. Paul J. Hooton, Attorney, City of Roanoke, Randolph County, under date of March 7, 1955.

In answer to your questions one, two, and three, it is my opinion, from the above authorities, that the Escambia County Hospital Board is not liable either to a patient, or to an employee, or a visitor for damages arising out of the negligence of the servants, agents, or employees of the Hospital Board.

The opinions of this office do not have the force and effect of law, and it might well be that the Hospital Board deems it expedient and advisable to protect itself by a liability policy of insurance, and to provide for insurance benefits to its employees pending some authoritative pronouncement by the courts to guide it in the premises.

Yours very truly,

JOHN PATTERSON,
Attorney General.

March 31, 1955

Hon. C. J. Coley
Judge of Probate
Tallapoosa County
Dadeville, Alabama

Probate Court—Guardian and Ward.

Upon the filing of a final settlement in probate court by a resigning guardian, a guardian ad litem need not be appointed, pursuant to Title 21, Section 135, Code of Alabama 1940, to represent the ward, in cases where a succeeding general guardian has already been appointed.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of March 12, 1955, is as follows:

"This is my request for your official opinion on the following legal question:

"Upon the filing of a final settlement by a resigning guardian is the ward defended by his general guardian; appointed as succeeding guardian, who is not adversely interested, as required by Alabama Code 1940, Title 7, Section 177, or is a guardian ad litem appointed to defend the ward pursuant to Alabama Code 1940, Title 21, Section 135."

It is my opinion that it is unnecessary to appoint a guardian ad litem in view of the fact that a succeeding guardian has already been appointed.

Title 7, Section 177, Code of Alabama 1940, reads in part as follows:

"§ 177. Guardians ad litem; appointment of.—In all cases, both at law and in equity, where infants or persons non compos mentis are made parties defendant to a complaint, bill, petition, or other proceedings, such infant or non compos mentis shall be defended by his general guardian, if he have one, who is not adversely interested to the infant or non compos mentis nor disqualified, but if he has no general guardian, or the general guardian is adversely interested or disqualified, he shall be defended by a guardian ad litem appointed by the court in which such cause is pending, unless otherwise provided; . . ."

This section would seem to relieve the probate court of the necessity of appointing a guardian ad litem upon the filing of a final accounting by a resigning guardian for whom a successor guardian has already been appointed. It has been held that the final settlement of the guardian account "is strictly a judicial proceeding having all the elements of a suit at law or in equity, and the decree rendered has the force, finality and dignity of a judgment at law or a decree in equity." *Lee v. Lee*, 55 Ala. 590, 602. Therefore, it is apparent that Title 7, Section 177, Code of Alabama 1940, is applicable to such proceedings.

However, Title 21, Section 135, Code of Alabama 1940, speaks in apparently mandatory language as follows:

"§ 135. Proceedings for final settlement.—The guardian, or his personal representative, must file in the court of probate a full account of the guardianship, accompanied by the vouchers, and verified by affidavit; and on the filing of such account and vouchers, the court must appoint a guardian ad litem to represent the ward, if he be a minor or of unsound mind."

While it would seem that this last section compels the appointment of a guardian ad litem upon the guardian's final account even when a successor guardian has already been appointed, to do so does not seem a reasonable procedure. Title 21, Section 136, Code of Alabama 1940, casts some light upon the intent of the Legislature. The pertinent part of Section 136 reads as follows:

"§ 136. Notice of settlement.—The court must appoint a day for the settlement, of which ten days' notice must be given to the succeeding guardian, if there be such guardian, or the personal representative of the ward, if the ward be dead, or to the ward, if he be a resident of the state and has arrived at full age, or has been relieved of the disability of nonage, or has been restored to sanity, and to all sureties on the bond of such guardian, by the service of citation; . . ."

The inference to draw from Section 136, *supra*, is that since the successor guardian, if there be one, must be notified of the settlement of account he is the proper one to protect the infant's or incompetent's interests.

There are no cases specifically deciding this point with reference to the present wording of Section 135, *supra*. This section first appeared in the Alabama Code of 1886, and has never been changed to date. The leading cases cited thereunder in fact preceded the enactment of the section in its present form. However, the case of *Jones v. Fellows*, 58. Ala. 343, decided that it was unnecessary to appoint a guardian ad litem on the settlement of a guardian's account when a successor guardian had already been appointed. The reasoning of the court on pages 346, 347 was as follows:

" . . . It was in no just sense a settlement between the guardian and his ward. It was a settlement between the outgoing guardian and his incoming successor. The new guardian having notice, it was his duty to see that his predecessor was brought to a fair and full account, as it was his duty to possess himself of all the estate and effects of his ward. There was no use for a guardian ad litem; for her proper guardian was there, whose interests and watchfulness would be more keenly alive than those of a mere guardian ad litem could be supposed to be . . ."

This language was quoted with approval in *Hall v. Hall*, 219 Ala. 199, 200, 121 So. 718.

The cases, which have held that the appointment of a guardian ad litem pursuant to Section 135, *supra*, and its predecessors, was a jurisdictional requirement, all may be explained by the fact that either no guardian of any sort was appointed to protect the infant's interests or that there was fraud in the procurement of the judgment.

For the above reasons, I am of the opinion that Section 135, *supra*, does not require the appointment of a guardian ad litem in view of the provisions of Section 136, *supra*, and Section 177, *supra*.

Very truly yours,

JOHN PATTERSON,
Attorney General.

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